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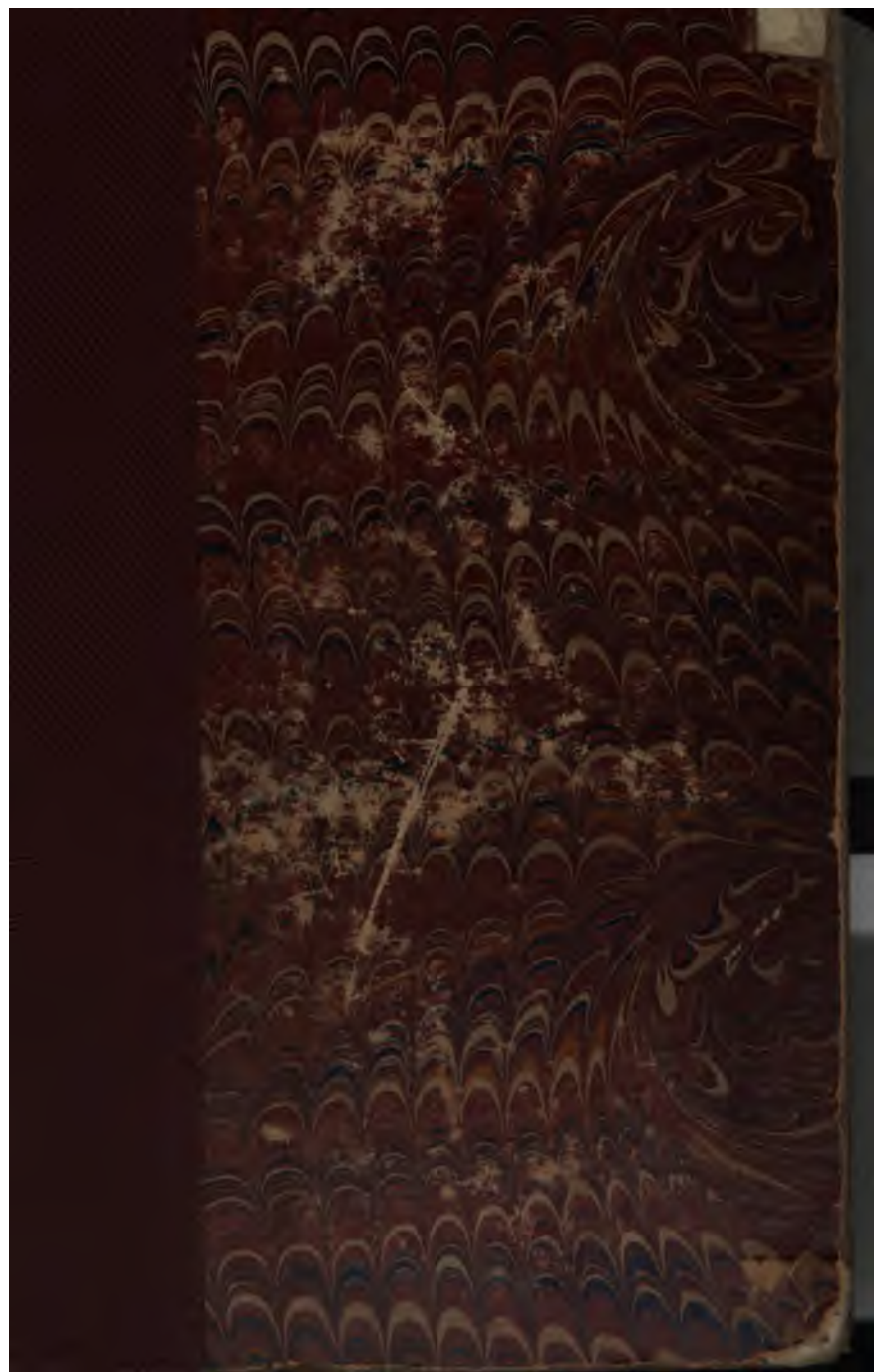
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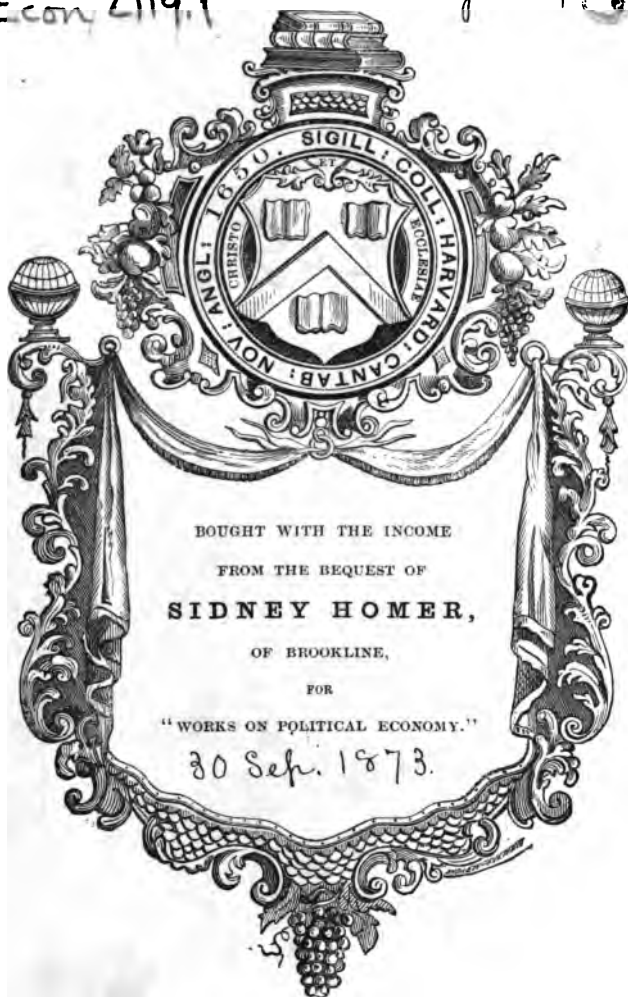
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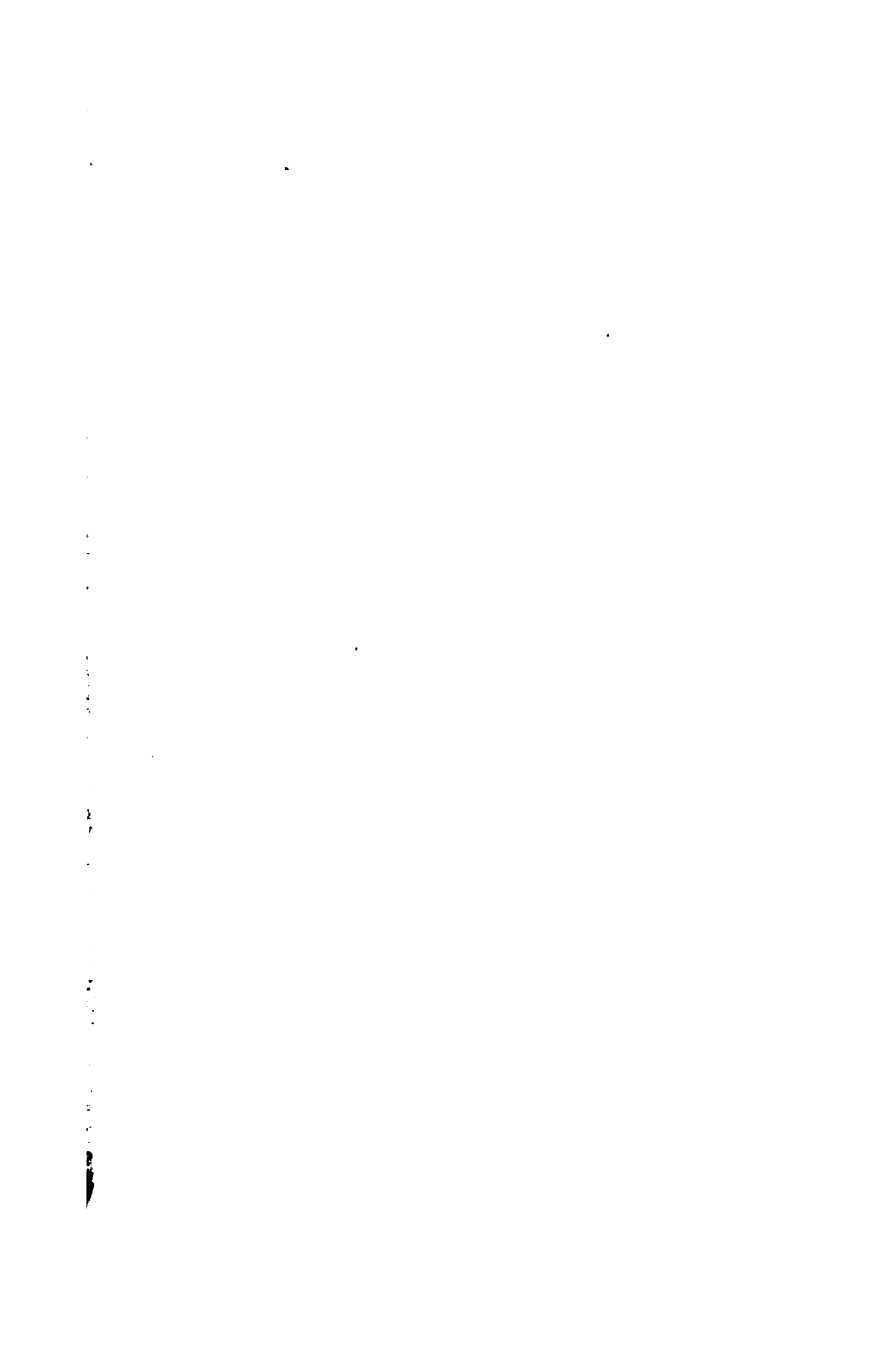
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LAND TENURES AND LAND CLASSES.

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HISTORY
OF THE
LAND TENURES
AND
LAND CLASSES
OF
IRELAND,
WITH AN
ACCOUNT OF THE VARIOUS SECRET AGRARIAN
CONFEDERACIES.

BY
GEORGE SIGERSON, M.D., CH.M.,
FELLOW OF THE LINNEAN SOCIETY, LONDON; MEMBER OF THE ROYAL IRISH
ACADEMY.



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LONDON :
LONGMANS, GREEN, READER, AND DYER.
DUBLIN : M'GLASHAN AND GILL.

1871.

~~9487.14~~

Icon 219.1

1873, Sept. 30.
Homer Fund.

R. D. WEBB AND SON,
STEAM-PRESS PRINTERS, DUBLIN.

TO

T. F. WETHERELL, ESQ.,

IN MEMORY OF FELLOWSHIP IN WORK

THIS VOLUME IS DEDICATED.

1

P R E F A C E .

THE study of the subject of this book was begun, and its principal results were published, previous to the introduction of the Irish Land Bill, which is now law. Since then, the work has been greatly expanded and augmented, with the desire of rendering it as full and complete as could be done within moderate limits. Alone responsible for all the additional matter, the author has to thank the proprietors of the *North British Review* for permission to re-publish what appeared therein, and its editor for accepting the dedication of this volume to one who has proved himself the faithful friend of a country not his own.

The labour—though one of love—was undertaken not unasked, in order to ascertain with all possible accuracy the relative as well as the absolute position of the Irish land-classes. To accomplish this, it was necessary to trace out those ancient laws, customs,

and usages from which the people had long been separated by statute and by force, but to which they have always clung with a fidelity which was not comprehended, and an ardour whose manifestations constituted their agrarian offences. The history of the past showed both what to revive and what to avoid in order to secure a negative benefit by the removal of obstacles to content, and a positive advantage by the establishment of conditions of cordial good feeling between all grades of the Irish land-classes.

Upon what has been done in the recent Land Act, the author has formed and expressed a generally favourable judgment, with all the more confidence, because, both in this and in a former work, he has not failed to indicate what he thought should be done, or what remains to be accomplished.

In the course of this History painful facts have been met and stated. But whilst half truths are likely to offend, the whole truth cannot but prove less disagreeable than instructive; for it concerns man rather than party, race, or class. It does not need to belong to any particular nation or grade to tyrannize or to resent tyranny. One is a universal failing; the other a virtue common to all mankind; and either

may be displayed as occasion offers, or self-interest impels.

Nothing has given the author more gratification than to be able to demonstrate this, and to prove that no inherent forces, no inveterate hostilities of race, or class, or creed, exist to disintegrate the People of Ireland. Divisions there have been, but these were the consequences of policy and circumstance. In spite of statutes and conquest-obstacles, the different elements of the population are to be found again and again commingling, and interchanging good offices. Now that those statutes have been abrogated, and almost all those obstacles removed, it is impossible not to anticipate an era of social peace, the beginning of which is already visible in the co-operation of representatives of all sections for the advancement of the common weal of Ireland.



NULLUS LIBER HOMO CAPIATUR VEL IMPRISONETUR, VEL DISSEISIATUR
AUT UTLEGETUR AUT EXULET, AUT ALIQUO ALIO MODO DESTRUATUR.
NEC SUPER EUM IBIMUS, NEC SUPER EÙM MITTEMUS, NISI PER LEGALE
JUDICIUM PARIUM SUORUM VEL PER LEGEM TERRE.—*Magna Charta of
Ireland, A.D. 1216.*

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HISTORY OF IRISH LAND TENURES.

CHAPTER I.

GENERAL CONSIDERATIONS.—CLASSES IN ANCIENT IRELAND.—
CELTIC LAND SYSTEM.—COMMONAGE, MENSAL AND PRIVATE
LANDS.—LAND-LORDS AND CATTLE-LORDS.—SETTLED TEN-
ANTS, FREE AND BASE: THEIR RIGHTS AND DUTIES.—NOT
SUBJECT TO EJECTMENT.—NOMADE FUIDIRS OR YEARLY
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FUIDIRS.—THEIR RIGHTS OF SETTLEMENT.—RECOVERY OF
FREE RIGHTS.—COMPENSATION FOR IMPROVEMENTS, OCCU-
PANCY TITLES, SECURITY OF TENURE AND CERTAIN RENTS.

THE attempt to impose laws on a people from with-
out, whilst their customs and native legislation are
ignored, can rarely be successful. Unexpected results
follow from measures so devised; and those who have
sown without studying the character of the soil are
made to wonder at the strange fruit of their labours.
Especially is this likely to be the case when former
errors have to be corrected, and when the nation to be
dealt with is one which has held steadfastly to its own
traditions against the adverse legislation of many
years. It is *essential*, therefore, in practically treat-

ing such a question as that of the Irish land, not only to collect the wishes of the Irish people, but also to investigate their antecedents. The ancient laws and customs of Ireland are not singularities to be stared at and written down, but active forces which have influenced the nation continuously and deeply to the present hour. There cannot be an intelligent and hopeful Irish policy without a careful study of Irish history. But such a study is far from easy. Until a few late years the treasures of the old Celtic lore were almost totally neglected; and though the day of superficial ore has gone by, still the specimens that have been brought to the surface inadequately represent the mine beneath. This puts a difficulty in the way, at the outset, in any endeavour to investigate the social position of the Irish Celts in relation to the land.

From before the introduction of Christianity into Ireland to the arrival of the Anglo-Normans, there were two great classes of inhabitants there—free and base. Prisoners of war and persons who did not perform their contracts might be reduced to servitude. St. Patrick himself was made a bondman, and the Acts of the Council of Armagh in 1171, show that there had been a custom of buying Anglo-Saxons from merchants, robbers, and pirates, and that they were held in servitude even in that year; for it was decreed “*ut Angli ubique per insulam servitutis vinculo mancipati in pristinam revocentur libertatem.*”

* Giraldus Cambrensis, *Hibernia Expugnata*, c. xxviii.

These were slaves. By an ancient Irish canon the oath of such a slave, unknown to his master, was void;* and by the Celtic laws the contract of a *mog* (translated "labourer") without his chief was void.† There were slave-labourers; but there were also other classes of base or bondmen. Thus it was recorded in the Black Book of Christ Church, Dublin, that certain lands were (A.D. 1042) granted by the Danish king Sitricus of Dublin to that Church, "cum villanis, vaccis, et bladis," "with the villeins, cattle, and corn."‡ And acts of this kind were not peculiar to the Danish colony: for the Register of the Priory of All Saints, Dublin, contained a charter from Dermot, the Irish king of Leinster, in which certain lands, "with the men thereof," were made over to it. The Black Book of Lismore contained a reference to another class, and to their duties: "It is to be noted," runs the extract given by Ware, "that every Caruc of the Betagii ought every year to plough for the lord (the bishop) one acre at the season of wheat, and one acre at the season of oats, etc., likewise the Betagii ought to draw home the corn of their lord." This was villein service; and Ware informs us that in that book, since burned, "the Betagii are distinguished from the tenants." But he does not state in what the distinction consisted. He adds, however, that men of

* Ware, *Antiquities and History of Ireland*, c. xxx.

† *Antient Laws and Institutes of Ireland*, vol. i. p. 51.

‡ Ware, *Antiquities and History of Ireland*, c. xxx.

this servile condition were not permitted to have an military employment. Little else appears to have been known in his time. Reference to "lands free and unfree" appears in the *Annals of the Four Masters*,* under the year 1585; and the editor explains (wrongly) that free lands meant land held by the chief's relatives, free of rent, and (rightly) that unfree land was land held by strangers, or natives who had forfeited their privileges by crime or otherwise at high rents, and for services of an ignoble nature.¹ The publication of the first volume of the *Ancient Laws* added incidentally some authentic details; but as it is chiefly concerned with an exposition of the Law of Distress, it gives no satisfactory description of the relations of the inhabitants to the land. There are, however, many striking analogies in it with the common law of England.† The Law of Distress itself

* *Annals of the Kingdom of Ireland by the Four Masters*, edited and translated by John O'Donovan, LL.D., M.R.I.A., vol., v. p. 1842, note.

† Compare, for instance, these two passages:—"There is distress of five days' stay for the last fleece," i.e., "at the end of the year or at the end of half a year, he (the chief) dies, and if he die before it, the opinion is that nothing is due in that case (i.e., the second food-rent upon the death, is due from the tenant), if the time for supplying the food-rent had not arrived when the chief died, i.e., the food-rent of the year in which he died, and it is not himself that exacts it."—*Ancient Laws of Ireland*, vol. i. pp. 185-7. "As a consequence of the determination of the estate of a tenant for life, the moment of his death, it was held in old times, that if such a tenant had let the lands reserving rent quarterly or half-yearly, and died between two rent-days, no rent was due from the under-tenant to anybody from the last rent-day

bears a close resemblance to the English law, even as modified by modern statutes.

The existence of different grades of people was markedly indicated by the provisions of this Irish law. Thus, no slave-labourer, "fuidir," shepherd, cow-herd, etc., could be distrained for debts due from himself or others, nor for offences against the district laws; but his foot was fettered, a chain was put round his neck, and he was kept on light diet, until his chief or lord settled the matter, and gave bail for him, or until he became forfeit in the ordinary course of poundage law. There was not only immediate distress, but distress with one or more days' stay, or grace, during which time the chattels seized were not taken to pound. The distress on those who paid food-rent had only one day's grace; the distress on those who paid cess or rent had three. Every prince and noble had a right to food-tribute from a limited number of base tenants. This food-tribute however was given in return for stock; the petty king gave his base tenants one hundred of each kind of cattle.* Beyond the statements that there were hired labourers as well as slaves

till the time of the decease of the tenant for life."—Williams, *Principles of the Law of Real Property*, part i, c. i. The chief had only a life tenure of his chieftainship and mensal lands.

* "Every king has seven base tenants, . . . and the amount of stock which he gives to the seven base tenants is equal to the number of Seds that a Brewy cedach should have, and a Brewylethech should have twice as many."—*Ancient Laws of Ireland*, vol. i. p. 61. "The Brewylethech has two hundred of each kind of cattle, except dogs and cats, and two hundred men in the condition of workmen," i.e., slave-labourers.—*Ibid.* p. 47.

that there were free tenants as well as base, and that there were three kinds of rents,—rack-rent from person of a strange tribe, an easy rent from one of the tribe, and a stipulated rent that may be paid to the tribe and strangers,—there is little more to be learned on the subject from this volume of the ancient laws, or from any published work. The word *cis* which is translated “rent,” might with at least equal propriety be translated “tax” or “tribute.”

In the absence of more detailed information, it is not to be wondered at that the most fanciful views have been expressed about the state of society in Ireland. Generally speaking, writers content themselves with the opinions of Spenser and Sir John Davis, and do not even consult recent publications. Professor W. K. Sullivan, however, has gone to the root of the subject in his very important introduction to the second series of O’Curry’s lectures. The work is still in the press, and we are indebted to the author’s kindness for the use of it. The ancient customs and laws which he has exhumed afford a perfect solution of many historical difficulties, and supply the reasons and grounds of national land-customs which have perplexed or misled all who have looked upon them from without. We shall here give only a brief statement of that fraction of his discoveries which it is absolutely necessary to know, in order to understand the position of tenants, and the bearing of those laws which we shall have occasion to indicate.

The land of each district was divided into common-

age land, office or mensal land, and land held by individual ownership. From such individual ownership, seven classes derived the dignity of their grades of nobility. One of these nobles might (it is known) be elected president or king over the district ; another vice-president.* In such case, the petty king retained his own real property, and had a life possession of the mensal lands, and an official dominion over the common land. There were seven other grades of chiefs who farmed land, but whose dignity was ascertained by the amount of their personal or chattel property, the number of cattle they owned.

The land-noble kept a portion of his land as demesne land. This he had cultivated by labourers or villeins of three kinds, who possessed no political rights and to whom we shall refer presently. The other portion of his land was distributed amongst two classes of tenants, called Saer Ceili and Daer Ceili, usually translated "free tenants" and "base tenants."

The Saer Ceili or free tenants gave him "military service and an annual tribute, helped him to bear the burden of the tribe, paid his mulcts and fines, ransomed him or any of his family who might be taken as hostages."† This kind of tenure seems to have repre-

* Or Tanist, i.e. "Second," hence what is called the law or custom of Tanistry, on which Spenser writes, and about which Sir John Davis complains. The Tanist succeeded to the kingship when the king died. Sir John Davis confounded their tenure of office with their ownership of property.

† Compare the above extract from Professor Sullivan's work with this :—"*The tenant*" (who held by knight's service) "was at first ex-

sented tenure by knight's service, exempt from some of its more grievous burthens, such as maritagium, livery and wardship. In that respect it resembled the beneficial tenure of free and common socage. The Dae Ceili or base tenants held by a tenure which also had some of the marks of common socage;* but as they were ascribed to the glebe (so long as they retained stock and possession only, however), and were charged with frequent contributions, it may probably have been more closely represented by what is sometimes called villein socage. They yielded military service, which mere villeins did not. Their characteristic render, however, was non-military or rural service: "their chief rent consisted of victuals [food tribute] given at two periods of the year, contributions at certain festivals, *Cai* or 'coshering,' that is, entertainment given on collecting their tribute," and other levies.

With respect to the commons, Professor Sullivan says: "No one had any right, save by permission of the tribe council, to the possession of a special part of the common land except from year to year. A re-division of it took place annually in each township, in

pected, and afterwards obliged to render to his lord pecuniary aids, to ransom his person if taken prisoner, to help him in the expense of making his eldest son a knight," etc.—Williams, *Principles of Real Property*, c. v.


* The custom of Gavel-kind, providing for the equal division of property amongst children on their parents' decease, existed in Ireland as in Kent. The Kentish tenure is defined as socage tenure subject to the custom of gavel-kind, in the Third Annual Report of the Real Property Commissioners, p. 7.

many localities, under the directions of a local court." "It was," he adds, "this annual division of the common land," with other things, "that gave rise to the idea that all land was held in common, and divided annually."

The tenants were not subject to ejectment. "All Ceili, whether free or base, had certain definite rights in the territory, such as the right to have a habitation and the usufruct of land." The importance of this fact is self-evident.

Below the Saer Ceili and Daer Ceili were the three classes mentioned above as cultivating the land-noble's demense lands, and possessing no political rights. These were the Bothachs, the Sencleithe, and the Fuidirs. The Bothachs or Cottiers, free and base, had a right of settlement, served the land-noble as hired and farm-labourers, and performed menial services. The Sencleithe, "old adherents," or "followers," were the descendants of mercenaries and prisoners "who had acquired the right of settlement." Like the Bothachs, they "did not possess the political rights of freemen; but they formed part of the affiliated family or clan, and were thus secure of shelter and relief, and were irremovable from the estate of the lord." The Fuidirs were of two kinds, bond and free. The bond Fuidirs were convicts, prisoners, and degenerate free Fuidirs. The free Fuidir was a free man but a stranger, an individual of another tribe or district. If he wished to retain the rights and privileges of a freeman, *he could only hold from year to year; "if he*

entered into longer engagements than one year with another than his own chief, he lost his rights, and became permanently a Fuidir." In that case, he became a bond or base Fuidir. But if he served the continuously under two lords succeeding one another he acquired, on the accession of the third lord, free rights. In any case, bondage did not extend to his grand-children. Thus even the Fuidirs acquired perpetuity of tenure. Professor Sullivan draws attention to this important fact, as in part explaining the traditional right of fixity claimed in the present day by peasants. He says: "This circumstance explains the expression so often heard among the Irish peasantry when they complain of being ejected by their landlords: 'My father and grandfather were there before me,' or 'My grandfather was a tenant of his grandfather.'" He shews likewise how the Irish law reveals the cause why rack-rented tenants, as Spenser remarked, would only hold "from year to year," and preserved their "liberty of change." The wars dispossessed many free tenants; and, whilst seeking a livelihood, they yet would not do anything to forfeit their ancient free rights, or bar their claims to their ancient holdings. On the other hand, it was the interest of alien or new lords to reduce all tenants to this rack-rented condition. Yet these Fuidirs, whose lot was regarded as one of hardship by the Irish law, had a right to all their improvements; and it has been shown that in the third generation, or at the election of the third lord, they obtained a security of tenure



equal to that enjoyed by English copyholders, who, like them, originally emerged out of a state of villeinage.

Thus, under the ancient laws of Ireland there were compensations for improvements in the case of the temporary yearly tenant, occupancy titles, security of tenure, and certain rents. The questions next arise : How long did these laws continue to govern and influence the population ; at what time or times were they replaced by others ; and what were the laws and customs set up in their stead ? These questions can only be satisfactorily answered by an historical examination of the fortunes and conduct of the colonies that entered Ireland from Britain.

CHAPTER II.

POST-CELTIC LAND SYSTEMS.—NORSE AND ANGLO-SAXON SETTLERS.—OFFICIAL INTRODUCTION OF ANGLO-NORMAN FEUDAL CODE.—THE WAR OF CHICANE.—MAGNA CHARTA.—CUSTOMS OF WELSH AND ENGLISH COLONIZERS.—COMMENCEMENT OF THE DE-GRADING SYSTEM.—FIRST AGRARIAN OUTRAGE: "SCORCH-VILLEIN" DEFRAUDS HIS TENANTS, THEY RESENT IT.—FIRST CASE OF LEGAL EVICTION.—TWO YEARS' NON-PAYMENT MUST ELAPSE BEFORE EXPULSION.—OPPRESSION OF THE CULTIVATORS.—RIOTS IN ENGLAND FOR FIXITY OF RENTS.—FIXITY DECREED BY KING RICHARD II.—"THE IRISHRIE SUPPRESS THE ENGLISHRIE" IN IRELAND.—HIBERNICISING THE ANGLO-NORMANS.—DURATION OF IRISH LAWS AND CUSTOMS.

THE men who settled among the ancient Celtic colonizers before the Norman invasion were not essentially different from them in their land-views. The Norse system resembled the Irish in a marked manner; and, although the Danish settlements were principally confined to a few towns on the sea coast, Scandinavian families had rooted themselves like ancient trees* far inland, and intermarriages between the princely families of the Irish and Norse were of no unfrequent occurrence.† The constant and friendly

* *Topographical Poem*, by O'Dugan, Bard of O'Kelly, A.D. 1570.

† *Saga of Burnt Njal*, translated by G. Dasent. *Wars of the Galls and Gaels*, edited by Dr. Todd.

intercourse that existed between the Anglo-Saxons and Irish Celts, during the seventh and part of the sixth century, combined with the influence of the great Irish schools, tended to modify any differences. At the least, Anglo-Saxon settlers were thus made acquainted with the principles of the Irish law, and could comprehend and adopt them. The land systems were, in many respects, remarkably alike.

The Anglo-Normans introduced the feudal system officially ; but how far was this a real and solid introduction ? Formally, Henry II. bestowed upon ten of his principal adherents the entire land of Ireland, by charters drawn up in accordance with Norman law ; but actually his adherents formed only a small cluster on the eastern coast, replacing and representing the Danish colony. John, though he claimed to be Lord of Ireland, did not assume the title of King of the Irish—a distinction with a difference. The Irish were long called “enemies ;” the Anglo-Irish insurgents were always called “rebels.” Dominion was claimed over the soil rather than over the people ; it was of more importance to adventurers that the soil should be called under the law than the people. In the reign of John the English territory was divided, on paper, into twelve counties ; and the nobles were sworn to obey the laws of England. The “War of Chicane,” which Burke described as following the War of the Sword, began in the Anglo-Norman settlement with John’s arrival ; for new adventurers

intrigued for the possessions of veteran invaders.* O his death, one of the first public acts of the Earl Marshal was the proclamation of a general amnesty in Ireland. The Great Charter was extended to Ireland in 1216, and solemnly confirmed in 1227, when Henry III. directed the Lord Justiciary to call before him the archbishops, bishops, earls, barons, knights freeholders, and bailiffs of counties, to read it publicly before them, and to swear the magnates of Ireland firmly to hold, observe, and enforce the laws and customs of England. The laws and customs were insisted on in various writs; thus in 1245 a writ was issued confirming former ones, and among other things containing these expressions:—"Rex, etc., quia pro communi utilitate terre Hiberniæ et unitate terrarum regis, rex vult et de communi consilio regis provisum est, quod *omnes leges et consuetudines* que in Regno Angliæ tenentur in Hiberniâ teneantur."†

The Welshmen who accompanied or followed the first adventurers, and whose language and customs were almost identical with those of the Irish, had already, doubtless, settled down, finding it easy to conform to Irish habits, though they may have ousted some landholders. In the Great Charter, the liberties and customs of the inhabitants of Wales were acknowledged and confirmed. It would have been well if the same principle had been applied to Ireland.

* Gilbert, *Viceroy of Ireland*.

† Betham, *Origin and History of the Constitution of England, and of the Early Parliaments of Ireland*.



But if the magnates of Ireland had faithfully followed and enforced even the customs and laws of England, compensation would have been allowed to tenants for improvements, and the humbler tenants would have grown up from a state of insecurity to one of security, as the English villeins grew to be copyholders, and as customary freeholders were developed. The tendency, however, has been directly the reverse in Ireland; and it is interesting to note the early indications of what is literally the de-grading system, the enforcement of which has caused innumerable disturbances, and given support to not a few attempts at insurrection in Ireland.

Curiously enough, the first case of collision between landlord and tenant occurred about the time of the extension of Magna Charta to Ireland. Henry de Londres, the landlord concerned, was not only Archbishop of Dublin and Papal Legate, but also Justiciary. He seems to have found some difficulty in distinguishing between his functions; for he had to be prohibited by royal writ from drawing temporal causes into ecclesiastical courts, and his conduct in excommunicating keepers of the King's Wood for resisting his wood-cutters was one of the causes of his deposition. From his general conduct to his tenants, and on account of the following circumstance in particular, he became popularly known as "Scorch-villein" (perhaps, "Ecorche-vilain").* When he had been

* The first case of legal action by landlord against tenant in the Pale appears to have been taken under the Statute of Westminster 2, 13.

installed as Archbishop (A. D. 1213), he summoned the tenants and farmers of the See to appear personally before him, on a day appointed, and to bring with them such evidences and writings as they enjoyed their holdings by. The tenants, at the stated time, presented themselves, and showed their evidences to their landlord, "mistrusting nothing." But before their faces, on a sudden, he cast them all in a fire secretly made for the purpose. "This amazed some that they became silent, moved others

Edw. 1., which took effect in Ireland, as the following extract shows : " The Statute of Westminster 2, 13, Edw. 1. gives the writ of cessavit against the tenant for the recovery of lands holden, who for two years ceases doing the services reserved by tenure. This is an introduction of new law, as is observed by Fitzherbert, and wherein Ireland not yet named ; yet that Statute was there received and put in execution in the same King Edw. 1. his time, as we may see by a record 26 Edw. 1., Rot. 2, in the Remembrancer's Office, but belonging to the Common Pleas, entitled : ' Placita apud Dublin, etc.' ' Pleas held at Dublin on the octave of St. Hillary, in the 26th year of King Edward Robert de Willeby and Alicia his wife appeared on the fourth day against William Trissel, in a plea that he should restore to them ten acres of land with the appurtenances, in Knightstown, which the said William holds of them by certain services, and which ought to revert to the said Robert and Alice by form of the Statute of our Lord the King lately enacted ; because the said William hath ceased for two years doing the said services, as is alledged, and the said William was summoned and did not appear. Therefore the Sheriff was commanded to seize the said lands into the King's hands, etc. etc.' "—Sergeant Mayart's *Answer to a Book entitled a Declaration setting forth how and by what means the Laws and Statutes of England, etc., came to be in force in Ireland*, by Sir R. Bolton, *Hibernica*, p. 43-4. The fact that this Statute was required to enable landlords to oust tenants who held by "certain" services, enables us to understand why the Archbishop should have sought to destroy the titles of his tenantry, and reduce them to the position of villeins at pleasure.

a stirring Choller and Furious Rage, that they regarded neither place nor person, but brake into irreverent speeches : 'Thou an Archbishop!—nay, thou art a Scorch-villain ;' another drew his weapon and said, 'As good for me to kill as be killed, for when my Evidences are burned and my Living taken away from me, I am killed.' The Bishop, seeing this Tumult and the Imminent Danger, went out at a back door : his Chaplains, Registers, and Summoners were well beaten, and some of them left for dead. They threatened to fire the house over the Bishop's Head ; some means were taken for the present time to pacify their outrage, with fair promise that all hereafter should be to their own content ; upon this they departed."*

This was the first agrarian "outrage," following the first attempt recorded in Irish history to degrade those who held by secure tenures into the position of mere villeins, or tenants-at-will. Such attempts were stoutly resisted by the settlers who came from England. But, with the lapse of years and the frequency of wars, civil and military authority got more into the hands of the lords ; and no law could stay their exactions but that of the strong hand. In proportion as they surrounded themselves with armed guards, in the border or march territory, the tenants were plundered. Some British freeholders fled to England, as Sir John Davis tells us ; and Leland re-

* Ware, *Annals of Ireland*.

lates that others took refuge among the Irish. In unsettled territory few would adventure except military Fuidirs, who would pay a rack-rent until better times. There was one check, however, on the lord, namely, the necessity of having "defensible" men as well as provisions. This obliged him to offer good terms and perfect security of tenure to such tenants would consent to remain; and thus we find freehold continually mentioned, although we are told they were often plundered and poor. Then, though incursions were made into the country, and strongholds built, the Irish swept all the land that was beyond bowshot of the walls; and it became a necessity for isolated lords to secure their alliance. They soon, also, adopted the customs. Internecine quarrels between the lords of the Pale, fomented by needy adventurers who, swarming into England from Poitou and Bretagne in the thirteenth century, straggled greedily into Ireland, caused the old Anglo-Norman lords and Irish noble to make common cause. Dundalk paid tribute to O'Hanlon; Galway, though well fortified, and the residence of the powerful De Burghs, lords of Connaught, paid an annual rent to the O'Briens of Thomond. Intermarriages became frequent. The Irish laws, tenures, and manners prevailed over the land amongst the Anglo-Normans as amongst the Irish. In fact, a thorough fusion was effected.

Then came an attempt of new adventurers and others to make this communion penal. They accomplished their purpose, so far as law went, in the Statute of Kil

kenny, A.D. 1367, the words of which witness to the perfect mingling of races : " et ore plusors Engleis de la dit terre guepissant la lang, gis, monture, leys, usages Engleis vivent et se government as maniers, guise, et lang des Irrois enemies, et auxiant ount fait divers mariages et aliaunces enter eux et les Irrois enemyes."* In this statute appended to one mention of the lords, are the words, " et lour subjits appelez Betaghes." It is complained that both lord and "Betaghe" were formerly governed by English law, but now by Irish. By a previous Statute (5 Ed. III.), enacted at Westminster and transmitted to Ireland, it was declared that one and the same law should be as well towards the Irish as the English, except the servitude of the "Betaghes" to their lords, which should be as in England with respect to villeins. This prominent mention of the two classes of lords and villeins would appear to prove that these lords had zealously adopted the degrading system, and enlarged the number of villein-occupiers, or servile "erthe-tillers," whose chief privileges were that they had protection and settlement. By the custom of England such villeins would grow into copyholders; but the extension of legal memory to the time of Richard I. may have interfered with their claim in Ireland. If the customs and laws of the two countries were indeed made identical, this interference would be as illogical as unjust.

Duke Lionel's Kilkenny Statute, though renewed

* *Tracts relating to Ireland*, published by the Irish Archæological Society, 1843.

in every parliament till the year 1452, did not succeed in dividing the Anglo-Normans and the Irish, or expelling the Brehon law from among the English, in arresting the intermarrying, fostering, and the like. It perished, but not until it had exasperated the Irish and Anglo-Irish, and made them believe there was nothing for it but to rise in arms, which they did with much success.

The period was not an auspicious one for the cultivators. In England, in the first year of Richard II the villeins assembled riotously in considerable bodies and endeavoured to withdraw their services, persons and other, from their lords, alleging exemplification from Domesday Book, with relation to their manor and villages, and claiming, on their account, to be held discharged and free. By a royal proclamation, preserved in Rymer, fixity of rents was granted them. This proclamation directed "*quod nulla acra terrarum quæ in bondagio vel servagio tenetur altius quam ac quatuor denarios haberetur, et si qua ad minus antea tenta fuisset, in posterum non exaltaretur.*" In Ireland the villeins had no protection. The king was not here: perhaps his deputy was one of those lords whose villeins thus revolted in vindication of ancient rights transgressed. Adventurers who crossed the channel, the younger sons of such lords, had neither scruple nor check put upon them. The intimate connection that existed between Irish and English in those days may be curiously illustrated. In the year 1451 official despatches went from Ireland to the Earl of

Salisbury, complaining that the Irish enemy, Mac-Geoghegan, "with three or four Irish captains, associated with a great fellowship of English rebels," had burned his large town of Rathmore.* In the previous year the insurgents in Kent were encamped at Blackheath under the leadership of "an Irishman, Iack Cade," who proclaimed himself Captain of Kent. The word "captain" was used to designate Irish chieftains; and at that time an Irish chieftan would find the leadership of Kentishmen in some respects congenial work.

In Ireland, the territory subject to English laws was, after the Kilkenny act, greatly contracted: "yr is not left in the nethirparties of the counties of Dyvelin [Dublin], Mith [Meath], Loueth, and Kildare, that yoynin to gadyr, oute of the subjection of the saide enemyes and rebels scarisly XXX miles in lengthe, and XX in brede ther, as a man may surely ride other go, to answerre to the Kynge's writtes." The castles of Carlow, "one of the keyes of the saide lande," had been taken or destroyed; there were scarcely liege people enough to victual the seven or eight towns of the south and east, "wherthroghe they ben on the poynt to be enfaymed."† In the reign of Henry VIII. the complaint was the same: "ther is no folke dayly subgett to the Kinges lawes but half the countye of Uriell [Louth], half the countye of Meath, half the countye of Dublin, half the countye of Kildare."‡

* Gilbert, *Viceroys of Ireland*, p. 361.

† Letter of the Privy Council, dated the 14th year of Henry vi., enrolled on the *Close Roll of Ireland*. Betham, *Origin and History*, etc.

‡ *State Papers*, Part 3, vol. ii. p. 9; *State of Ireland*, A.D. 1515.

The Irish lords "encroached" on the English Pale "the Irishrie suppressed the Englishrie." Scarcely five persons in any parish of four counties of the Pale were English habits. The Irishry forcibly re-took from the Earls of Ormond and Kildare divers of their possessions, and became masters of the whole country, except some parts of Leinster.* The Lord Deputy and Council wrote to the King that "the Ynglishe blodde of the Inglishes Conquest ys in maner worn out of the land," some through attainders, some by departure, some by being slain, "and contrarywise the Irish blodde, ever more and more without such decaies, increaseth;" and then "ther is such scarcenes of the Englishyshe blodde in this parties, that of force we [are] dryven not only to take Irish men, our natural enemies, to our tenants and erthe-tillers, but also to our household servants some horsmen and kerne."†

Tenants and cultivators, regarded as natural enemies, had little to expect from the lords when the latter had power to oppress them. Dispossessed and harassed tenants of the Marches were doubtless among those who sought to be replanted under the colonial lords. Spenser, looking back, described their condition. To these lords, he says, "repaired divers of the poore distressed people of the Irish, for succour and relief of whom, such as they thought fit for labour and industriously disposed—as the most part of thei

* *Tracts relating to Ireland*. Irish Archaeological Society, 1841. Paper in British Museum, Titus B. 12.

† *State Papers*, Part 3, vol. ii. pp. 338-481.

basest sort are—they received unto them as their vassals, but scarcely vouchsafed to impart unto them the benefit of those laws under which they themselves lived, but every one made his will and commandment a law unto his own vassal: thus was not the law of England ever properly applied unto the Irish nation, as by a purposed plot of Government, but as they could insinuate and steal themselves under the same, by their humble carriage and submission.”* Such writers as Spenser are only authorities with respect to the Pale and March lands.†

North as well as south, however, they bear unimpeachable testimony to the industry of the Irish cultivators: “for the churl of Ireland is a very simple and toylesome man, desiring nothing but that he may not be eaten out with ceasse, coyne, nor liverie.”‡

The Irish nobles got, it is certain, a recognition of their national laws and customs in a parliament held in the time of Lord Deputy Sir Anthony St. Leger, when they were induced to acknowledge Henry VIII. for their sovereign, “reserving yet, (some say) unto themselves all their own former Privileges and seig-

* *View of the State of Ireland*, Ware's edition, 1633, p. 10.

† In Elizabeth's reign, A.D. 1565, Oliver, a “gentleman of the Pale,” made a complaint:—“That the gentlemen of the County of Kildare made to this (Kildare) Earl's grandfather on his petition to serve a present necessity, instead of Coyn and Livery, not as this Earl's grandfather would have it, at his pleasure.”—*The Earls of Kildare and their Ancestor*, by the Marquis of Kildare, Addenda, p. 96.

‡ *Journal of the Ulster Archaeological Society*. Captain Smith, A.D. 572, vol. ix. p. 179.

niorities inviolate," writes Spenser. His complaint that they were "now tied but with termes," that the King's power was limited and no longer absolute, is sufficient to show that he believed in the pact. "They reserved," he adds again, "their titles, tenures, and seigniories whole and sound unto themselves, and for the prooffe alledge that they have ever sithence remained to them untouched, so as now to alter them would (say they) be a great wrong."^{*}

This confirmation of Irish rights and privileges was a tardy imitation of that granted to the people of Wales, in Magna Charta ; but the avarice of the alien adventurers in Ireland could not tolerate its existence when they had power to end it.

It appears from Spenser that in the year in which he wrote, 1596, the Irish laws and customs prevailed, virtually undisturbed, in the territories of the Irish nobles. The Irish annals record that, in 1554, the Anglo-Norman Earl of Kildare received "a great fine in cows, namely, 340 cows, as an eric for his foster brother, who had been slain."[†] Still later, in 1565, it appears that the same Earl not only followed Irish customs, but acted as an Irish chief. He "has the captainship [chieftainship] of O'Ferral's country;" and "he appoints Irish Brehons to weigh their offences," and to levy fines on the offenders. [‡] In 1603, Niall O'Donnell, a strenuous

^{*} *View of the State of Ireland*, pp. 6, 7.

[†] *Annals of Ireland by the Four Masters*.

[‡] *The Earls of Kildare and their Ancestors*, Addenda.

ally of the English, convoked the clan according to custom, in order that he might be appointed chieftain in due form ; “and he was styled O'Donnell without consulting the King's representative or council.”* Thus, down to the first year of James I., we have public profession of the Irish laws and customs. There are indications that the practice must have continued much later. |||

* *Annals of the Four Masters.*

CHAPTER III.

THE "COMPOSITION OF CONNAUGHT."—COMMISSION TO COMPOUND FOR UNCERTAIN CESSSES, CUTTINGS, AND SPENDINGS.—FIXED RENT FOR LAND BEARING HORN OR CORN.—DUTY-DAYS.—FORMAL ABOLITION OF IRISH TITLES AND GAVEL-KIND.—A LEGAL EPOCH.—ALTERATION OF THE RELATION BETWEEN CHIEFTAIN AND CLANN.—THEIR OLD AND NEW RIGHTS AND DUTIES.—PRIMOGENITURE.—ABOLITION OF LANDLORDS.

TOWARDS the last third of Elizabeth's reign, two important events took place,—the "Composition" of Connaught, and the Confiscation and Plantation of the Earl of Desmond's estates, which formed a large part of Munster.

Desirous that the nobles of Connaught* should surrender their titles, and hold them by patents of the Crown, the Lord-Deputy Perrot issued a commission in July, 1585, to the Governor of Connaught and divers of the Anglo-Norman and Irish nobles of the province, empowering them to call together "all the nobilitie, spiritual and temporal, and all the chieftaines and lordes," to devise how their titles and rights should be affirmed, and all "uncertaine cesse, cuttings, and

* *A Chorographical Description of West or Iar-Connaught.* Irish Archaeological Society, 1846.

spendings" compounded for. The commissioners proposed that the Chieftains of Countries, Gentlemen and Freeholders, should "passe unto the Queene's Majesty her heirs and successours a graunt of tenne shillings English, or a marke Irish, upon every quarter of land containing 120 acres, manured or to be manured, that beares either horne or corne, in lieu and consideration to be discharged from other cesse, taxation, or tallage, excepting the rising out of Horse and Foote for the service of the Prince and State, such as should be particularly agreed upon, and some certaine dayes labour for building and fortifaction for the safety of the people and kingdome." Inquisitions succeeded; and indentures were drawn between the Lord-Deputy for the Queen, and certain chieftains for themselves and others. Thus the "indentures of composition," A.D. 1585, for "the countrie of the O'Fflaherties, called Eyre-Conaght" (West-Connaught), gives the name of a score of chieftains who agree "for and in behalfe of themselves and the rest of the chieftaynes, ffreeholders, gentlemen ffarmers and inhabitants, having land or holdings," to grant the ten shillings on condition of being freed from "all manner of cesses, taxes, chardges, ymposicons, purveying, eateing, findinge, or bearing of soldiers, and from all other burthens whatsoever, other than the rents, reservacons, and chardges hereafter specified, and to be exacted by Parliament," etc. Among the charges reserved they are bound to "beare hostings, roods, and jurneyes." It was further agreed (on parchment) "that the names, stilles, and titles of captayneships, taynist-

ships, and all other Irishe authorities and jurisdiction . . . together with all ellection and customarie divisic of land" should be abolished; and that their land should "lynialie descend from the father to the son according to the course and order of the lawes of England." O'Fflahertie, "for the better maintenaunce of the degree of knighthode," was to have castle and land confirmed to him, to hold by knight's service.

The following important paragraph is inserted in several of the indentures:—"And forasmuch as divers of the meane freeholders and the tenants dwelling upon their lands are and shall be greatlie burthened by this composition, if the petty lords and captaines next above them be allowed to take such rentes and customarye duties as they pretend to belong to them, for remedy whereof it is condescended that" the said chiefs, "and all others of that sort of petty lords or captaynes, shall have, hold, possess, and enjoy all their castles and lands to descend from each of them to their heirs by course and order of the laws of England, and after the decease of everie of them now livinge, the aforesaid rents, duties, and all exacons shall from henceforth be utterlie determynd and extinguished for ever." This elevation of mean freeholders into direct dependence on the Crown is remarkable. But not all that was set forth was carried into effect; and the subsequent disturbances overset all plans. Sir Morrogh O'Fflaherty, himself one of the commissioners, bequeathed his lands to all his sons, "to be indifferentlie betwixt them parted;" the eldest, whom

he appointed "chiefe of and over my children, name, kindred and countrye," was to have the first choice.* He appointed two friends as a court of arbitration. His death occurred in 1593. He evidently made this will fearing that, if he should die intestate, the operation of the Irish law would be superseded by that of the English law of primogeniture.

Considered from a legal point of view, the Composition of Connaught forms an epoch of importance. The relations of people and chiefs towards each other and towards the land were, in that province, altered. The clan lost its ancient power of electing to the headship the individual of its choice† (a choice generally limited to members of a certain family). The lands held in trust for it by the chief, in virtue of his office, were permanently alienated to his use and that of his heirs. The customary division of the common lands was stayed, so that they could not be let out, but were to remain as commons.‡ The custom of gavel-kind was forbidden, and replaced by "the course and order of the law of England" (Kent being apparently excluded from England). The chief was

* *A Chorographical Description*, Appendix, etc.

† In 1553, the brothers of O'Brien, Lord of Thomond, rose against him and drove him into his tower, because he "had obtained from the King the right of succession for his son, who had been styled baron in preference to his seniors." Not the son, but a brother succeeded, at his death soon after. *Annals of the Four Masters*.

‡ The appropriation of such commons in Partry caused, 1869, much sensation; and the libel suits of *Proudfoot v. Lavelle* and *Lavelle v. Proudfoot* have arisen out of it.

converted into a feudal lord,* so far as the mensal land and his own estate were concerned. But for this privilege he had to commute all others; and for the privilege of being confirmed in their own estates, all the other land-nobles (as well as their captain or chief) had to commute all rents and rights likewise. The "meane freeholders" and their tenants—who were the Free and Base tenants of the Irish—lost certain political privileges; but their landlords were swept away from over them. On them would devolve, it was seen, the payment of the ten shillings for every quarter of land that bore "corne or horne;" and they were consequently freed from all other rents or services due to their former landlords. But this was deferred till the death of the latter, whose vested interests were thus respected. So remarkable an interference with property arrangements recalls at once the Statute of Quia emptores (18 Edw. I.). The greater barons, holding under the Crown, had granted smaller manors to be held of themselves; their inferior lords granted more minute estates; and so on, till the Lords Paramount observed that they were losing many profits, which fell into the hands of the mesne or middle lords, the immediate superiors of the terretenants. They accordingly obtained this Statute of

* By Stat. 11. Eliz. sess. 3, cap. 7, no Earl, Baron, Viscount, Lord, or pretended Captain was to take the title of Captain or ruler of any country being shire ground, except by letters-patent; nor was such Captain to assemble the people for making war or peace, or granting scesses.

Westminster, which directs that "upon all sales or feoffements of land, the feoffee shall hold the same not of his immediate feoffer, but of the chief lord of the fee of whom the feoffor held it."* Queen Elizabeth was Lady Paramount in Connaught; and between her and the "meane freehoulders" or terre-tenants (the base tenants or villein-socagers being excluded) all mesne lords or middle-men were swept off, on the death of those then existing. This was tantamount to the establishment of a Peasant Proprietary. The paragraph enacting it was inserted in the indentures for the territory of Clanricard, and the counties of Mayo, Sligo, Leitrim, and Roscommon. Perhaps it had something to do with the after quietness of the western province. The previous state of things there had been dangerous, for the Lord Deputy shows himself anxious to entice the natives to "expulse the Scotts,"† of which Mayo was "a verie receptacle," whilst Sligo, "well enhabited and ritche," was more haunted with strangers than he desired, "unless the Queene were better answered of her custome."‡

* Blackstone, *Commentaries on the Laws of England*, Book II. c. 6.

† There appear to have been "swarmes" of Scots as allies in Ireland, especially after the selection of Edward Bruce, A.D. 1315, as King of Ireland. The Anglo-Irish and Irish united under his standard; and he and his brother, Robert Bruce, advanced almost within sight of Dublin.

‡ *A Chorographical Description of West or Iar-Connaught*—Despatches, etc., Appendix.

CHAPTER IV.

THE "PLANTATION OF MUNSTER."—CONFISCATION OF DESMOND'S ESTATES.—CONDITIONS OF PLANTING.—SECURITY FOR TENANTS.—DESCRIPTION OF THE PEOPLE: THEIR INDUSTRY AND HOSPITALITY—FRADULENT PLANTERS CHEAT THEIR ENGLISH AND PLUNDER THEIR IRISH TENANTS.—BORDER-PRACTICE.—WOODKERN, TORIES, RAPPAREES, AND RIBBONMEN.—HONEST PLANTERS: THEIR TENANTS AND LABOURERS.—HOW THE IRISH TENANTS RECOVERED FARMS AND SECURITY OF TENURE.—THE ENGLISH THRUST OUT BY THEIR ENGLISH LANDLORDS.

THE "Plantation of Munster" commenced in the autumn of the year following, 1586, on the attainder of the Earl of Desmond, and the confiscation of his estates. Feoffements which he had made of his lands were annulled in the Parliament of Dublin, though not without remonstrance and opposition. The booty to be divided amongst expectant adventurers was great if the forfeiture should be declared; and they were not balked. Over half a million of acres (574,628) were declared escheated to the Crown, and were parcelled out into seigniories of 12,000, 8,000, 6,000, and 4,000 acres each. The undertakers, that is, those who should undertake the plantation or peopling of the territory, were to have estates in fee-farm, at a rent of £33 6s. 8d. for estates of 12,000 acres,

during three years, and double that sum thenceforth.* The seignories were to be peopled in seven years upon the following plan or "plot," as it was called:— Every undertaker of 12,000 acres was bound to plant eighty-six families: his own family was to have 1600 acres, one chief farmer 400, two good farmers 600, two other farmers 400, fourteen freeholders (each 300) 4200, forty copyholders (each 100) 4000, twenty-six cottagers and labourers 800.† Other undertakers were bound proportionately. Edmund Spenser was one of the undertakers; he got 3028 acres in Waterford county.‡ Sir Walter Raleigh fared exceptionally well: he obtained 42,000 in Cork and Waterford.

We are able to obtain a fair glimpse of the interior of the country from the careful description of one of the new undertakers. Those who confine their reading to Spenser get simply the opinions of one who from his sea-side castle saw but little of the land. That little was exceptional march land; and his book was composed when he had grown embittered—for he was not a successful colonist. Robert Paine, the undertaker whom we quote,§ commences by warning his English countrymen against heeding the evil reports of some disappointed men. They speak of

* Smith, *History of Cork*.

† Cox, *History of Ireland*, fol., 1689, Part I. pp. 392-5.

‡ His *View of the State of Ireland* was written ten years after, two years before his death.

§ *Tracts relating to Ireland*.—Irish Archæological Society. A Briefe Description of Ireland; made in this yeere 1589, by Robert Paine, unto xxv of his Partners, for whom he is undertaker there.

the dangers of Ireland, he says, "yet are they freedde from three of the greatest dangers : first, they cannot meete in all that land any worsse than themselves ; secondly, they neede not feare robbing, for that they have not anye thing to loose ; lastly, they are not like to runne in debte, for that there is none will truste them. The greatest matter which troubleth them is, they cannot get anything there but by honest trauell [work] which they are altogether ignorant of." He describes the Irish as of three sorts :—Kerns, or war-like men, who were few, on account of the late wars ; wanderers ; and the better sort. These last, he says, "are very civill and honestly given ; the most of them greatly inclined to husbandrie, although as yet unskilful, notwithstanding, through their great trauell, many of them are rich in cattell. Some one man there milketh one hundred kine, and two or three hundred yeawes or goates, and reareth yeerely most of their breed." They give you a "welcome and plentiful" entertainment ; "for although they did never see you before, they will make you the best cheare their country affords for two or three days, and take not anything therefore." "Most of them," he continues, "speak good English, and bring up their children to learning." The children in the towns are taught to "conster the Latin into English." "They keepe their promise faithfully," he adds, "and are more desirous of peace than our English men, for that in time of warres they are more chardged." "They are quick-witted, and of good constitution of bodie." "They

have a common saying, which I am persuaded they speake unfeinedly, which is *Defend me and spend me*; meaning from the worsser sort of our countrymen." This phrase has been often misrepresented, but Paine gives its meaning from the lips of the speakers. He adds: "They are obedient to the laws, so you may trauell through all the land without any danger or injurie offered of the verye worst Irish, and be greatly releevd of [by] the best." The new landlords or undertakers he divides into two classes: bad and good. The "worsser sorte" had done much hurt, and discouraged many from coming, "for they have enticed many honest men over, promising them much but performing nothing, no, not so much as to pay their servants or workmen wages; they will not let any terme above xxi yeers or three lives, and they demand for rent xiid. an acre; this is so far from the meaning of her Majestie, as appeareth by her highnes graunt, that (as I think) they have or shortly wil make al their estates voyd." How this conduct was reproduced by the planters in Ulster we shall see. Paine adds, "They find such profite from their Irish tenantes who give them the fourth sheafe of all their corne, and xvid. yearly for a beastes grasse, besides divers other Irish accustomed duties. So they care not although they never place an Englishman there."

The surge of war and confiscation by which the Pale was extended loosened the old form of society; and those who gave up most got most favour. To this fate many Irish yielded until they should be able

to re establish their rights. It must be borne in mind that in the wars the humble class of cultivators generally escaped the change and destruction that fell on their superiors in station. The honey was too welcome not to secure the toleration of the working bees. The English and Irish combatants looked down on them as hinds and churls,* unfit for fighting, but apt to produce rent and cattle. Disinclined for war and revolts, if not pressed into them by intolerable oppression, they remained, even through Cromwell's transplantations, the one comparatively fixed element in Irish social history—a settled substratum.

The extension of the border of the Pale over them was marked chiefly as extending border-practice—the practice of plundering them, of levying uncertain rents, and keeping them in uncertain tenure. Their land-laws, rents, and security were preserved from destruction exactly so far as they were able to enforce them. They had the strength of definite aims against desultory oppression, of numbers against isolated undertakers, of armed allies in the outlawed Kerns, Tories, Rapparees, to whom they gave aid and comfort, for good reasons. For these men were the guards and executive of the proscribed laws and Bre-

* “The rebels themselves will turn away all their rascal people, whom they thinke unserviceable, as old men, women, children, and hyndes, which they call churles, which would onely waste their victuals, and yelde them no ayde, but their cattle they will surely keepe away. . . . This sort of base people doth not for the most part rebell of themselves, having no heart thereunto.”—Spenser, *View of the State of Ireland*, p. 74.

hons; they were employed to enforce the ancient land-code, not only against undertakers, but against tenants—to check the competition of base tenants and wandering Fuidirs, to protect security of tenure, and to keep down rack-rents. Revolutions in England always threw a back-wash of strange undertakers or landlords upon Ireland, who usually at first regarded the native tenantry as “naturall enemyes,” and frequently strove to treat them as such. But those wars also threw on the country the armed remnants of defeated armies, who in their lurking-places received aid and comfort from the earth-tillers, and who did them secret service in return. Whether they were called Wood-Kern, Tories, Rapparees, or Ribbonmen in successive ages, the part they played was the same—the enforcement of the ancient system and immemorial customs.* These were some of the checks oppo-

* The Statute 7 Gul. III. sess. 1, c. 21, shows that Protestants or reputed Protestants, as well as Papists and reputed Papists, were concerned as “Robbers, Rapparees, and Tories,” just as in the middle of last century there were Protestant “Hearts of Steel” and “Hearts of Oak” in the North in arms against “cesses” and “rack-rents,” as well as “White Boys” and “Rockites” warring in the South against “rack-rents” and “tythes.” In Donegal county, until a few years ago, the Ribbon society was wont in its Courts or Lodges to issue a decree, popularly known as a “Donegal decree” or “Glenswilly decree,” under which the cattle of debtors were distrained in accordance with Brehon law. The distress was hidden away in the mountains until a settlement was made. The cattle of landlords who imposed what were believed to be overcharges have thus been taken, and, on forfeiture, sold for the benefit of the tenants. The ancient custom of land division co-existed, and (in part) still exists, in Donegal and the West.—See Coulter, *Tour in the West of Ireland*.

sed to the practice of degrading the Irish tenants into mere rack-rented Fuidirs, and degrading into villenage the English tenants, to whom Queen and landlord had promised the security of copyhold tenure at least. The tenants, in both cases, made open resistance whenever they could.

But Paine saw a better class of undertakers also. They gave land in fee-farm, and leases for 100 years, at sixpence an acre. These advantages were, when he wrote, limited to English tenants. The conditions of the Plantation prescribed that no English planter should convey to any "meer Irish;" that the head of each plantation should be English; that the heirs-female should marry none but of English birth; and that none of the "meer Irish," should be maintained in any family there.* Nevertheless these tenants quickly accepted Irish customs. Quite unconsciously, Paine lauds Sir Richard Greenfield for what was really an adaptation of one method in which the Irish chief dealt with his tenant. He stocked his farm and got tribute in return: Greenfield, we are told, "taketh a very good order for artificers and labourers; he will let any poore man of honest behaviour a house, xl acres of land, and vi milche kine for xl s. the yeere, for the terme of three lives; and if any breede off sufficient stock and restore the rest, xx s. rent." The importance of this acceptance of Irish customs lies in the fact that with them came the practice of security

* Smith, *History of Cork*,—extract from an ms. of Lismore.

and settlement.* “Master Phane Beecher,” near Kinsale, one of the largest undertakers, conducted his plantation so honourably that tenants flocked to him: “but he hath covenanted with every of his said tenants to place others under them, by which meanes there are many small perselles of 50, 60, or some 100 acres, to be had as good, cheape, and under as goode conditions as the best, for his speciall care is that *every* inhabbiter there should have as much libertie as a freeholder in England.”†

It may be supposed that there were others as careful. Those who were not so, and grasped at too much, found soon that they had to relax their grasp, or lose permanent advantages. The class of tenants they could obtain were too independent to subject themselves to rack-rented bondage, when they could help it. So they gave no hostages. They neither built nor improved; they sat loose; they made sure

* Leland says regretfully, “Leases and conveyances were made to many of the Irishry.”—Vol. ii. p. 302.

† It is observable that though Paine regrets seeing the Irish allowed as tenants, he always speaks favourably of them, “although the name of the Irishe among the ignorant is odious.” Many traitors in Desmond’s war were driven to revolt: “As well die as traitors as be harried to death, spoiled by the worser sort of soldiers.” “But as touching their government in the corporations where they beare rule, it is doone with such wisdom, equity, and justice, as demerits worthy commendations. For I myself divers times have seene in severall places within their jurisdiction wel nearly twenty causes descided at one sitting, with such indifferencie, that for the most parte both plaintiff and defendant hath departed contented; yet manye that make shewe of peace and desireth to live by bloode doe utterlye mislike this or any goode thing that the poore Irish man doth.”

that they could proceed to fresh fields and new pastures at their own pleasure.* Landlords must have been quickly taught that such tenants-at-will, and at rack-rent, only cared to remain until they had obtained all they could from the natural or pre-added fertility of the soil. Having impoverished it and the short-sighted over-greedy lord, they set fire to their sheds of interwoven branches, and drove off their stock to better quarters. The undertaker, in order to save his property, had to secure permanent tenants; and these could only be had by giving security of tenure. Once compelled to relax his grasp, nothing prevented his compliance with the tenure-customs of the coun-

* "The soile is generally fertill, but little and badly manured, by reason of the great exactions of the lordes upon their tenants. For the tenant dothe not holde his lands by any assurance for tearme of yeares or lyfe, but only *ad voluntatem domini*, so that he never buildeth, repareth, or encloseth the groundes, but whensoever the lord listeth is turned out, or departeth at his most advantage."—*Tracts relating to Ireland*. Irish Archæological Society, 1842: A Treatise on Ireland, by John Dymmok (probably an attendant on Essex), 1600. So also Spenser: "*Irenæus*. The Lords of the land and free-holders doe not there use to set out their Land in farme or for tearme of yeares to their tennants, but onely from yeare to yeare, and some during pleasure, neither, indeed, will the Irish tennant or husbandman otherwise take his Land than so long as he list himselfe. The reason hereof in the tennant is, for that the Land-lords there use most shamefully to racke their tennants, laying upon them Coynty and Livery at pleasure, and exacting of them (beside his Covenants) what he pleaseth. So that the poore husbandman either dare not binde himselfe for longer tearme, or thinketh by his continuall liberty of change to keepe his Land-lord the rather in awe from wronging of him" (tenants were scarce then). "*Eudoxus*. But what evill cometh hereby to the Common-wealth, or what reason is it that the Landlord should not set, nor

try; for in the majority of cases he was ignorant of land-customs and of agriculture, and had to deal with men whose business it was to know both, whose help he needed, and whose minds were tenacious of ancient habits. They knew the country too, its soil and climate, and could resort to its markets and fairs.* And thus it happened that, after the lapse of ten years from the commencement of the plantation, a disappointed undertaker, Edmund Spenser, had to record of his fellows that "instead of keeping out the Irish, they doe not onely make the Irish their Tennants in those lands, and thrust out the English, but also some of them become meere Irish."† And such tenures had

any tennant take his land, as himselfe list? *Irenæus*. Marry, the evil which cometh hereby is great, for by this meanes both the Land-lord thinketh that he hath the Tennant more at command, to follow him into what action soever he shall enter, and also the tennant being left at his liberty is fit for every occasion of change that shall be offered by time, and so much also the more ready and willing that hee hath no such state in any his houlding, no such building upon any farme, no such coste employed in fensing and husbanding the same, as might with-holde him" (i.e., provided he had a secure estate in them) "from any such wilfull course. . . . All which hee hath forborne and spared so much expence for that he hath no firme estate in his Tenement, but was onely a Tennant-at-will, or little more, and so at will may leave it. And this inconvenience may be reason enough to ground any ordinance for the good of the common-wealth. against the private behoofe or will of any Land-lord that shall refuse to graunt any such tearme or estate unto his Tennant as may tend to the goode of the whole Realme."—*View of the State of Ireland*, pp. 57, 58.

* It was not till the Stat. 11 and 12 and 13 Jac. 1. c. 4, that the Acts of Henry VI. were repealed, which, among other things, forbade the taking of merchandise among the Irish at their fairs.

† *View of the State of Ireland*, p. 105.

they, and such knowledge of their rights, that it was difficult to pack a jury; for jurors had to be freeholders, and "most of the Free-holders of that Realme are Irish," who have "stepped into the very roomes of your English."*

* *Spenser*, p. 16. His advice that they should be "heedfull and provident in Iuries" appears to have been taken. Questions of Titles and Rights submitted to Juries heedfully provided by encroaching undertakers or adventurers did not result satisfactorily to the land-owners, though pleasantly to the land-hunters. Another Desmond Rebellion was in part thus caused.—Vide *Pacata Hibernia*: 1633.

CHAPTER V.

THE "PLANTATION OF ULSTER."—DISGAVELLING AND ITS CAUSE.—OFFICIAL LAND-HUNTERS.—CONFISCATION OF ESTATES OF THE ULSTER EARLS, O'NEILL AND O'DONNELL.—CONDITIONS OF THE PLANTATION PLAN.—RIGHTS AND DUTIES OF LANDLORDS AND OF TENANTS.—FIXED RENTS AND CERTAIN TENURES.—THE FLAW IN THE SCHEMES.—DEFRAUDING THE ENGLISH AND SCOTTISH AND RACK-RENTING THE NATIVE TENANTRY.—THE IRISH REGAIN THEIR GROUND.—ORIGIN OF THE "ULSTER CUSTOM" AND OF ITS VARIETIES.—IMPORTED USAGES.—A PLANTER'S EXHORTATION TO IMMIGRANTS.—PAROLE COPYHOLD AND CUSTOMARY FREEHOLD PRACTICES AND ALIENATION-FORMS.—THE ULSTER CUSTOM A GENERAL IRISH CUSTOM: HOW PRESERVED IN THE NORTH AND BROKEN ELSEWHERE.—THE INTERMINGLING OF THE RACES.

SUCH Irishry or Degenerate men of English name holding their lands by Irish custom in the several provinces (some counties excepted), as should offer to surrender and take them to hold of the Crown, were (by 12 Eliz. c. 4,) to receive them under Letters-Patent, or have and to hold them for years or life in tail or in fee-simple, or with remainders to other persons.

To Elizabeth succeeded James I., and the Irish expected much from a Celtic king. But in 1605, the customs of Tanistry and Gavel-kind were abolished by judgment in the King's Bench; and in 1608, the patrimony of the Ulster Earls, 511,465 acres, was forfeited to the Crown. Most authorities believe that the

plot for which the Earls suffered was only a sham one, concocted by land-hunters. Scruples were rare among adventurer officials. Letters exist showing that they suborned a man * in Elizabeth's reign, to assassinate the predecessor of one of these two Earls. The formal disgavelling of the country, immediately previous, gives colour to this disbelief in a plot on the part of the Earls, whilst it suggests a pre-determination to have their lands confiscated, nominally to the Crown, actually for the benefit of their judges. The advantage of previous disgavelling† was this: under English law, lands held in gavel-kind were greatly privileged against escheats, the custom of Kent being expressed in its maxim, "The father to the bough, the son to the plough." The point has been overlooked; yet it accounts for much of the eloquence employed against gavel-kind by Sir John Davis, who, Attorney-General and Commissioner of Confiscation though he was, managed to obtain, in the precincts allotted to English undertakers, servitors, and natives, three grants of 2000 acres, 1500 acres, and 500 acres respectively. He did not fulfil the conditions of the Plantation scheme. It is necessary to understand this, because it enables us better to appreciate the protests of the tenantry against the unscrupulous frauds of the planters.

* *Ulster Journal of Archaeology*, State Papers, vol. ii. p. 218.

† No such necessity, of course, existed in the case of the Anglo-Norman Earl of Desmond.

The essential points of the plantation scheme were as follows :*—There were three classes of undertakers : (1.) English and Scottish, servitors or not, who were bound to plant English or inland Scottish tenants : (2.) Servitors (officials) in Ireland, who might plant with Irish as well ; (3.) Natives of Ireland, to be made freeholders. The three classes were to have estates in fee-farm—the first class (after two years' grace) to yield rent at the rate of £5, 6s. 8d. per 1000 acres ; the second class the same, but £8 per 1000 acres of lands planted with Irish ; the third class (after one year's grace) to pay at the rate of £10, 13s. 4d. for every 1000 acres. Undertakers (of the first two classes) of 2000 acres were to hold by knight's service in capite ; of 1500 by knight's service as of the castle of Dublin ; of 1000 in common soccage : the first to build a castle and strong court or bawn ; the second a stone or brick house, with the same ; the third a strong court or bawn, at least—all within two years. The tenants were to be induced to build. Timber for all was given for nothing from the King's woods. They were forbidden to aliene to the Irish, or (in the case of servitors) to any who would not take the oath of supremacy. For five years, unless excused by license, they were to be resident, and only aliene one-third part in fee-farm and another third for 40 years or under.† They were

* "Orders and Conditions to be observed by the Undertakers upon the Distribution and Plantation of the Escheated Lands in Ulster," printed 1608.—Harris, *Hibernica*, p. 123.

† "Nor set them at uncertain rents, or for a less term than for twenty-one years, or three lives."—Carte, *Life of Ormond*, vol. i. p. 73.

to reserve the rest. On the expiration of five years they were free to alienate, except to the Irish, etc. They received power to erect manors, to hold Courts Baron twice a year, to create tenures to hold of themselves upon alienation. "The said undertakers shall not demise any part of their lands at will only, but shall make certain estates for years, for life, in tail or in fee-simple."* No uncertain rents were to be reserved. Their patents were to have provisos against cuttings, cosheries, and other exactions. For five years they could import anything, not by way of merchandise, duty free; for seven years they could transport their produce free of custom or imposition. The Irish natives were, like the rest, bound to make certain estates for lives or years to their under-tenants, and to take no Irish exactions.

There is an aspect of such elaborate care about this Plantation scheme, and Sir John Davis has so praised its superiority over the Queen's plot for Munster that observers have been and are deceived. Their attention is concentrated on the flagrant breach of its studied provisions by the undertakers; and they omit to notice the one great flaw which it has in common with the Munster scheme, and by which the destruction of both was necessarily insured.

There was no arrangement whatever made as to the amount of rent to be paid by the under-tenants. Their rents were not fixed like those of the larger tenants,

* Compare this with the commutation offered for Irish tenures by *Stat 12, Eliz. cap. 4*, already quoted.

commonly called landlords;* there was no sliding scale dependent on produce price proposed ; no arbitration courts were appointed. It was a mockery to provide for certain estates to be made at certain rents, whilst the greater tenants (whose rents were fixed) were left free to name the rent of the under-tenants. There was, indeed, no fear of over-competition ; and if the Irish native tenantry had been impartially recognised and estated, there would have been no temptation to evade and make void the plantation clauses. ✓

The undertakers were very human ; they not only yielded to temptation, but sought it. As in Munster, they invited over tenants from Britain, and when they had them in their power betrayed them. A few got

* The name of " landlord " misleads many of such upper tenants in Ireland, and makes them suppose that they have some special, absolute or allodial ownership in the soil, which others have not. This led them to resent Drummond's observation that " Property has its duties as well as its rights." In the same way it leads them to resent the movement by the under or terre-tenants for security of tenure and settled rents. They forget, or do not know, that their own predecessors had to foment more than one agitation against the uncertain render of knight's service,—aids, relief, wardship, livery, maritagium, and (for King's tenants in capite) primer seisin, alienation fines—before they obtained or could obtain that secure tenure at certain rents which they now enjoy. It was only at the Restoration, when their landlord, the King, was in difficulties, that (by the Stat. 12 Car. II. c. 24.) they obtained what they sought. A class of tenants which has suffered should have consideration for another class which suffers ; nor should the special champions of English land-law forget its root principles :—"The first thing, then, a student has to do is to get rid of the idea of absolute ownership. Such an idea is quite unknown to the English law. No man is in law the absolute owner of lands. He can only hold an estate in them."—Williams, *Principles of the Law of Real Property*, c. 1.

leases; a few had "myunys" [minutes]; a large number held only by promise; and some who could went away.* The Irish, in fact, ousted them again largely, as in Munster. British tenants who had no estates declined to improve the land or stock it. Some sublet to the Irish, who, with cattle in hand, kept to "greasing." While exorbitant rents could be had of the Irish, most landlords and agents competed for them, and finally, as in Munster, had to come to their terms, more especially when the wars of 1641 placed them at their mercy. Whilst it could be said, as in several places in Pynnar's Survey it is said, "All this land is inhabited with Irish," tried veterans who, with the "wickedest" of septs, the Clandonnell Scots, repulsed Elizabeth's armies, it is evident that the Irish land-customs would be maintained. The British settlers were dependent on these Irish; for we are told that if the Irish had been put away with their cattle, the British would have had either to forsake their dwellings, or to endure great distress "on a suddain." The dispersed tenants were contributors to the wood-kern.

The land customs of the Scottish and Welsh settlers were, like their languages, very similar to the Irish. Those customs went to the formation of what is now known as the Ulster custom, though it existed then, so

* See Report of the "Survey in 1618-9, by virtue of his Majesty's Commission, under the great seal of Ireland, to Nicholas Pynnar and others." "Letter of Sir Thomas Phillips, Knt. of Lymyvady."—Harris, *Hibernica*.

far as security is concerned, all over Ireland, except where Border-practice could rule unchecked.

Did English settlers contribute anything to the formation of this custom? We believe they contributed to shape it, by moulding the congenial native elements after their own copyhold custom, and so helped, by virtue of their ascendancy, to obtain its recognition. The Gaelic-speaking natives bought and sold among themselves; the landlord or agent was, doubtless, content to receive the rent from any comer. The English-speaking tenants, except those dispersed at a distance from the undertaker's residence, were brought into such close contact with him that he could supervise their dealings. Yet he became so dependent on them in days of civil strife, when not only his estate but his life was at stake, that such supervision must have been nominal. He knew that he had committed such breaches of his patent, that he held it, as it were, by sufferance, and that if he did not at least compound with his tenants by submitting to their customs, they might complain so urgently as to cause forfeiture of his estate. King's commissioners were going about. Sir Josias Bodley had examined and reported severely in 1613; and King James had thereupon written earnestly to the Lord Deputy,* ordering a general survey of the plantation on which he personally prided himself. Nicholas Pynnar had then (1619) reported severely. It was known amongst

* Letter given in the *Concise View of the Irish Society*, Appendix, pp. 37-8.

them all that, for delinquencies of which each was more or less guilty, the Londoners' "Irish Society" had incurred the sequestration of its Irish property (1624). In consequence of accusations which might have been brought against any of them, it had its patent annulled by the Star-Chamber in 1636.* Ucalegon's house was aflame. Thus it was necessary for the landlord to keep his tenants in good humour, to respect their customs at least, and allow them security of tenure, that his own might not be disturbed. They were to be virtually and practically "estated tenants," whether a lease was executed or not. They had been shown their farms, and told to enter and take possession. Livery of seisin was made to them; and in those days the maxim, *seisina facit stipitem* ruled, and possession was rather more than nine points of the law. Parole holdings were then not necessarily invalid.

Now what land-customs would the English tenantry carry to Ireland with them? Not those of mere villeins, for the lowest class could not go; and if villeins could have gone, they would have been at once elevated above pure villenage by the articles of plantation requiring estates to be made them in fee, for life, or years. But in England villeins had been universally rising into secure copyholders, "strengthening their tenure of their estates to that degree that

* "A.D. 1655. In this year the City and County of Londonderry was restored to the Society, who had been deprived of it by a decree in the Star-Chamber, anno 1636."—Ware, *Annals of Ireland*.

they came to have in them an interest in many places full as good, in others better than their lords." The common law, of which custom is the life, gave them title to prescribe against their lords, and "on performance of the same services to hold their lands in spite of any determination of the lord's will. For although in general they are said to hold their estates at the will of the lord, yet it is such a will as is agreeable to the customs of the manor ; which customs are preserved and evidenced by the rolls of the several courts-baron in which they are entered, or kept on foot by the constant immemorial usage of the several manors in which the lands lie. And as such tenants had nothing to show for their estates but these customs, and admissions in pursuance of them entered on these rolls, or the copies of such entries witnessed by the steward, they now began to be called tenants by copy of court-roll, and their tenure itself a copyhold." So that "when tenure in villenage was abolished (though copyholds were preserved) by the Statute of Charles II., there was hardly a pure villein left in the nation." * Thus the lowest class who could go over were copyholders, either in fact or lawful expectation. It will next be seen that an earnest invitation was published in England, urging cultivators to go over to receive copyholds, and that the customs and methods of surrender are identical in their essential particulars. The author of the rare tract we quote from,

* *Blackstone's Commentaries*, B. ii. c. 6.

Thomas Blenerhassett,* was "one of the undertakers in Fermanagh;" and his word may be relied on, because we find, by Pynnar's Survey, that he did estate his tenantry.† Two years after the publication of the

* *Direction for the Plantation of Ulster and Exhortation to England*, etc., imprinted at London by Ed. Alde, for John Budge, dwelling at the Great South doore of S. Pauls Church, 1610.

† Fermanagh. "Thomas Blenerhassett hath one thousand five hundred acres, called Edernagh" [he built bawne and house of lime and stone]. "He hath begun a church. He hath also a small village consisting of six houses built of cage-work, inhabited with English. I find planted and estated on his land, of Britiah families: freeholders, 4, viz., 1 having 80 acres, 1 having 46, 1 having 22, 1 having 16; lessees for years, 3, viz., 1 having 60, 1 having 26, 1 having 8." But Pynnar did not see them, "for the under-tenants and many of the tenants were absent."

It is instructive to glance at a few more typical reports: Cavan.—"John Taylor, esq. hath fifteen hundred acres, called Aghiduff. . . . I find planted upon this land, of Brittish Birth and Descent: freeholders 7, viz., 1 having 288 acres; 1, 264; 1, 96; 2, 48 le piece; 2, 24 le piece; lessees of years, 7, viz., 1, having 192; 2, 48 le piece; 2, 24 le piece; 2, 48 le piece. *Cottagers in fee*, 11, viz., 3 having 60 acres le piece; 3, 31 le piece; 3, 30 le piece; 1, 4 acres; 1, 2 acres."

A Scottiah undertaker, "William Hamilton, esq. holdeth 1000 acres called Dromuck. . . . I find planted and estated upon this land, of Brittish Birth and Descent: freeholders, 2, viz. 2 having 120 acres le piece; lessees for 3 lives, 2, viz., 1 having 42 acres, 1, 54; lessees for years, 4, viz., 1 having 128 acres; 1, 84; 1, 48; 1, 36. *Cottagers that hold for years*, 6, viz., 1 having 30 acres; 1, 20; 1, 15; 1, 12; 1, 11; 1, 10."

In Clancally, a precinct appointed for English undertakers, "Sir Hugh Wirral hath a thousand acres, called Ardmagh. . . . He hath no freeholder nor leaseholder, and but three poor men on the Land, which have no Estates; for all the land at this time is inhabited with Irish."

In Castlerahin, a precinct allotted to servitors and natives, "Sir Thomas Ash, Knt., holdeth 1000 acres, called Mullagh. Upon this proportion there is an old castle new mended, but all the land is now inhabited with Irish."

King's Orders and Conditions, this writer addresses Prince Henry, in order that "the never-satisfied desires of a few should not quite disgrace and utterly overthrow the good and exceeding good purposes of

In the precinct of Omy, appointed for English undertakers, "the Earl of Castlehaven hath 3000 acres, called Faugh and Rarone. Upon this there is no building at all, either of Bawne or Castle, neither Freeholders. I find planted upon this land some few English families, but they have no estates, for since the Earl died, the tenants (as they tell me) cannot have their Leases made good unto them unless they will give treble the Rent which they paid, and yet they must but have half the Land which they enjoyed in the late Earl's time." On another property "the agent for the Earl showed me the Rent-Roll of all the Tenants, but their Estates are so weakly that they are leaving the Land."

Londonderry, Haberdashers' Hall property, "Sir Robert M'Clelland hath taken this of the Company for 61 years." . . . "There were nominated unto me six Freeholders, which were in Scotland, and these were set down but for small Quantities, and twenty-one are Leaseholders, *but not any one of them could show me anything in writing for their Estates, neither could the Landlord show me any Counterpains.*"

Summing up in an appended letter, Pynnar gives his opinion of what he saw in the whole Survey:—"I may say that the abode or continuance of those inhabitants upon the Land is not yet made certain, although I have seen the Deeds made unto them. My reason is, that many of the *English* tenants do not yet plough upon the Lands, neither use Husbandrie, because I conceive they are fearful to stock themselves with Cattle or Servants for those labours. Neither do the *Irish* use Tillage; for that they are also uncertain of their Stay upon the Lands; so that by this means the Irish ploughing nothing do use greasing, the *English* very little, and were it not for the *Scottish* Tenants" [who had more security, or were poorer,] "which do plough in many places, those parts may starve; by reason whereof the *Brittish*, who are forced to take their Lands at great Rates, do lie at the greater Rents paid unto them by the *Irish* Tenants who do grease their Lands; and if the *Irish* be put away with their Cattle, the *Brittish* must either forsake their Dwellings, or endure great Distress on the suddain." Thus middlemen came.—*Pynnar's Survey, Hibernica.*

many." He and certain of his acquaintances being resolved sincerely to plant, he had crossed the seas, and arrived when Sir Arthur Chichester and others were "surveying near Lyfford," about a dozen miles from Londonderry. Knowing some of the chief knights and captains, he asked them why they were not forward themselves to undertake those "profitable seates and rich grounds." The building of forts and castles, they replied, was costly work, and even should there be a manor erected, with twenty or forty tenants, walls and men would not secure their goods. Castle and fort might preserve their lives in an extremity; but the "cruell Wood-Kerne, the devowring Woolfe, and other suspitious Irish would so attend on their business, as their being there should be little profitable unto them." There was Sir Tobye Cawfield, dwelling in Charlemount, a fort of many others the best, well furnished with men and munitions; "yet now (even in this faire calme of quiet) his people are driven every night to lay up all their Cattle as it were in Warde, and doe hee and his what they can, the Woolfe and the Wood-Kerne (within Caliever-shot of his Forte) have oftentimes a share." Indeed, "all men there in all places doe the like." Even within what they had long called the English Pale, it was so. "Sir Iohn King, he dwelleth within halfe a mile of Dublin, Sir Henry Harrington, within halfe a mile on the other side thereof, . . . they also doe the like, for those forenamed enemies doe every night survey the fields to the very Wals of Dublin."

Armagh city could not restrain the violence of the wolf: and there were no inland towns equal to Armagh. Bogs and woods* were the strongholds of the wood-kern and wolf. Now what was to be done to plant such a country?

In the first place, towns must be built and safely insured, "with the helpe of some Irish"—the agricultural classes. Then "those good fellows in trowzes, I mean the everywhere dispersed creatures in the creats" [*i.e.*, the cattle-owners,] "seeing this course will no longer hearken after change, nor entertaine the lurking Wood-Kerne as now they doe." But towns are only outposts. Tenants must be induced by every means to take and settle on remote lands, which the undertaker should allot them "by Coppy of Court-roll, or otherwise." "So all the lands farre remote" would be occupied. And his reasons are to be observed:—"Oh, this word *Myne* is a strong warriour, every man for his *owne* will adventure farre. The Mercenary Rutter will oftentimes have his charge empty with men, when his purse shall be full with dead payes. This my valiaunt and provident warriour *Myne*, he will rather increase than decrease his number, he doth watch and ward night

* So rapidly were the woods wasted that it was found necessary to provide, by Stat. 10 Gul. III. sess. 2, c. 12, for the planting of 260,600 trees, some in every county. This was a change for the land which Cynthia delighted in more than all the gods who used to resort there:—

"Whylome, when Ireland florished in fame
Of wealth and goodnesse far above the rest
Of all that beare the Brittish Islands' name."—Færie Queen.

and day without ceasing. Therefore, in this our Undertaking, let all the people be such as shall enjoy every man, more or lesse, of *his owne*." "There be twelve of us," he says, "under the assignation of the Right Honourable Gilbert, Earl of Shrewsbury," who intended to purchase and plant, bestowing their best endeavours on the matter, "for discoursing will not doe it." In his *Exhortation to Fuyre England*, he explains what men are needed to colonize with. He warns off poor indigent fellows, without faculty or money, who would only starve, and adds: "Art thou an husbandman, whose worth is not past tenne or twenty pounds? goe thither; *those new manor-makers will make thee a Copy-holder*; thou shalt whistle sweetely, and feede thy whole family, if they be six, for sixpence a day."

Upon such an invitation as this, in which twelve undertakers joined, it is reasonable to believe that a fair number of actual or presumptive copyholders, desirous of a wider field, would go to Ireland, and there establish their custom. Provision was made for copyholders by the Queen's Plot for Munster, so that forty families—nearly half the total number—should be planted on every large estate. Custom, rather than writing, was the life of their tenure. It was the substantial basis of the colonization. It was widened by the fact of so many holding "by promise," by "mynnyts," by writings not handed over or lost. It was supported by the universal Irish custom of prescriptive rights, and compensation for improvements. It was

confirmed by terror of the Wood-Kern, and by the resolve of armed men, who had taken over their small capitals, invested them, built houses, and improved wastes, to defend their property against all comers. It was sealed by the acquiescence of the undertakers, who knew that they were themselves but tenants on sufferance. The Wood-Kern, the Royal Commissioners, and the rising of 1641, made them feel this acutely, and allow a custom to which, or to greater concessions, they were pledged, and which was acknowledged by the law of England. Many of them were probably glad to be excused from the necessity of giving greater concessions, and, being used to the custom, thought it nothing strange. Writing materials were not to be had every day; and this was probably the cause why copies were infrequent. The changes of upper tenants or undertakers by means of alienations or sales were not rare. These changes and the wars tended to throw the formal records of the Courts-Baron into confusion, or transform their written acts into verbal law. The dispersed state of the tenantry, the difficulty of intercommunication, the social condition of the country, threw or kept the tenants on their own resources. They bargained and sold together, interchanged chattels and lands; and in doing so, they did what they were authorised to do by customs handed down for generations, and confirmed by law, on the manors from which so many of them had come. The Ulster custom may be called a *parole copyhold custom*; and we shall see that, in the reign

of William III., such a parole tenure was confessed to exist.

The Plantation schemes of both South and North show that it was intended to exclude tenants-at-will. Anciently the lord's manor was divisible into demesne-land, worked by labourers for himself; book-land or charter-land, held by deed under certain rents and services, from which arose freehold tenants holding of particular manors by some suit and service to the same; and folk-land, distributable at pleasure and resumable at the lord's discretion, being indeed land held in villenage.* Now it is clear that the plantation properties were granted as demesne and book or charter lands only, with an evident and understood purpose. It is also clear that, with a purpose, evident also, but not exactly understood, the grantees laboured to degrade the properties into folk-land, and the tenants into a state resembling villenage. But they began too late. They had to deal with tenants the lowest of whom knew the sweets of a copyholder's liberty.

In Ulster, the tenant alienes sometimes with, sometimes without, his lord's knowledge. Anciently, the feudal bond being reciprocal, neither lord nor tenant could aliene without the consent of the other. The restraint on the lords soon wore off. There were fines upon alienation; but in England "these fines seem only to have been exacted from the King's tenants in"

* Blackstone's *Commentaries*, B. ii. c. 6.

capite, . . . but as to common persons, they were at liberty, by Magna Charta, and the Statute of Quia emptores, to alien the whole of their estate, to be holden of the same lord, as they themselves held it of before.”* By the statute of Edward I, every freeman could sell his lands or tenements, or parts thereof, at his own pleasure; and by the Statute 32 H. VIII. c. 1, the power of testamentary alienation was given for estates in fee-simple, and, in later days, by the Statute 29 Car. II c. 3, sec. 12, for estates held for the life of another. Now, there was a considerable number of freeholders so privileged by written deed, in the plantations; and there was a still more considerable number so privileged by “mynnyts,” and by “promise.” To the latter class some of the former may have been added, by the loss or destruction of their documents during the subsequent civil wars. Thus, we should have a comparatively large, and ever increasing body, who had a right to buy and sell their small estates or farms, and whose right, being unrecorded, could be trampled on in law, as often in fact it would have been had they not resisted by force. They had no need to consult the lord† when they

* Blackstone's *Commentaries*, B. ii. c. 5.

† Land Commissioners' Report: Evidence of James Sinclair, Esq., J.P., Strabane, Co. Tyrone:—"In this district, as long as I remember and for a great time back, as far as the Plantation of Ulster, the tenant-right has been respected, and has been valuable only to the tenant. The notion is, that it originated in the manner in which the settlement of Ulster was made. The tenants *in capite* got a certain portion of land, on condition that they were to sublet to under tenants a portion,

bought or sold a farm; and they did not consult him. But in later years, the upper tenant or landlords have been labouring to reclaim them from such a state of freedom, degrading them to the supervised copyhold surrender.

The custom in Ulster varies in different counties; copyhold customs were not the same on all manors. Numbers of the colonizers went from the North of

for three lives and twenty-one years, upon strictly feudal terms, to be ready with arms to defend the place; and it appears to me that we can trace, from all that I see about the matter, the present indefeasible tenant-right up to that; for those who were settled by the original patentees were in some sort fosterers or kindred, and were then engaged in the defence of the country, and became rather a kind of friendly tenant than a tenant for money; and I think from that time to this the tenant-right has been continued, and in no way altered by law, but by custom." "18. Do you think it arose from those persons, so brought in, having in the first instance built those dwellings and houses themselves? Yes, I think so, and being connected with the patentees in a closer way than the mere connection of a tenant with a landlord." "22. Can you give any statement of what you consider the price or value of it, compared to the year's rent or the acre? I do not believe there would be any general rule; but within this fortnight a man in a mountain district that belongs to myself came for some timber to build a house. *I had never seen him, nor heard of him before*; but on inquiring who he was, I learned that he had given £80 for a farm without a lease, that paid £3 a year."—p. 743. James M. Reid, Esq., Land-agent, Co. Tyrone:—"56. Is it usual to allow the tenantry to sell the tenant-right? Yes, it is in part, but usually you must please the agent; and the incoming person, if he happens to be a favourite or pet, can buy it at less than one-half the market-price."—p. 824-5. William Blacker, Esq.:—"67. The property has been brought into cultivation within the memory of man, by the exertions of the occupying tenant, without any assistance from his landlord whatever; for instance, in the case of the allotments on the school lands the other day, the poor man builds his house and brings the bog land, which was worth nothing, into a valuable property."—p. 324. C. J. Knox, Esq.,

England to the north of Ireland, and took with them a custom which harmonized well with the freeholders' unwritten rights. They held, indeed, by copy of court-roll; but their tenure hardly originated in villenage, for even the merely formal expression that they held at the will of their lords, inserted in other copies, was excluded from theirs. Their lands, held by such a tenure, were customary freeholds. Lawyers have de-

agent, Clothworkers' Company :—"32. In the present state of the country, it is not only judicious to allow the sale of the tenant-right, but I think it would be cruelly unjust to prevent it—unjust, because the tenantry and their forefathers have been permitted to make all the permanent improvements at their own expense—and injudicious, because with the poorer classes it is the best security against the dilapidation of the premises, the price of the tenant-right always being in proportion to the condition of the farm."—p. 651. Townland Valuation Report of 1844 : Evidence of A. Senior, Esq. :—"1091. The Committee should not understand that the tenant-right depends entirely upon an outlay made by an improving tenant, inasmuch as an outgoing tenant on a mountain district would receive tenant-right who had not expended anything upon the land." "1142. The early settlers were stationed in a hostile country, and could only tempt their retainers to come over, or to remain, by granting permanent advantages in return for the protection they afforded the first chief occupiers." "1103. As a question of political economy, it is precisely the same to the incoming tenant, whether he pays a small rent and a large fine as tenant-right, or a larger rent to the proprietor." "1155. Do I understand from you that the landlord does not actually choose the incoming tenant, but it is a bargain between the man who is ejected, [case supposed,] and the man who is coming in? Entirely so; the usual form which appears is an advertisement, headed 'FARM FOR SALE,' issued by the outgoing tenant, who is in want of a purchaser. Under this system, therefore, there are almost no arrears of rent." (The rent being a first charge on sale-proceeds.) "1156. That is called 'Farm for Sale?' Yes. 1157-8. Even though the tenant has no lease? Yes."

bated whether this freehold is in the lord or in the tenant; but, though the decision leans in favour of the lord where he has right to mines and timber, etc., where such rights, or most of them, do not exist, the customary freeholds "may with good reason be regarded as the actual freehold estates of the tenant." Such tenant would then "possess the rights of other freeholders in fee-simple, subject only to a customary mode of alienation."*

What connection is there between any such customary mode of alienation and that prevalent in Ulster? An instance is given of a locality in Westmoreland where "the customary mode of conveyance has always been by deed of grant or *bargain and sale*, without livery of seisin, lease for a year, enrolment."† The similarity of this to the Ulster usage is obvious. But this is not all. The "cottagers in fee" whom Pynnar mentions as established in Ulster, and whom he places lowest on his list, even beneath those who had merely the chattel interest of a term of years, appear to have held an estate in fee-simple in copyholds.‡ Such was the tenure that Thomas Blenerhassett promised. The copyholders' right to alienate is of ancient origin. They stood on

* Williams, *Principles of the Law of Real Property*, P. III., c. 1.

† Ibid., note.

‡ Perhaps one reason why undertakers were averse to give written records to freeholders was that freehold lands in fee-simple escheated to the Crown if the tenant were convicted of treason. The times were stormy, land-seekers on the look-out (as personally they knew) for discoveries and "concealments," "paper petitions" common in Charles I.'s time. Now copyholders' lands escheated to the lord.

a footing analogous to that of freeholders. Like them they took the oath of fealty, and did suit at the manor-court. As copyhold tenure originated in villenage, the customary services, varying with different manors, had an agricultural, sometimes a menial character. We find such customary services prevalent in Ulster, and elsewhere in Ireland, at the beginning of the present century, and lingering on in remote localities. Under that head come the "duty-fowl" sent to the landlord or agent, the "duty-days" when the tenant was obliged to supply "duty-men" and horses and do "duty-work" at cutting his landlord's corn and turf, and drawing them home. The character was impressed on leases, where these "and other dues too shameful to mention" were specified.* The copyholder who alienated by surrender did so by "coming to the steward in court, or, if custom permits, out of court, and there, by delivering up a rod, glove, or other symbol, as the custom directs, resigning into the hands of the lord, by the hands and acceptance of his said steward, all his interest and title in the estate *in trust*, to be again granted out by the lord to such persons and such uses as are named in the surrender. . . . Immediately upon such surrender in court [baron] or upon presentment of surrender made out of court, the lord, by his stewards, grants the same land again to *cestuy que use* (improperly called the sur-

* *Statistical Survey of Tyrone*, drawn up for the Dublin Society, 1802.

renderee) to hold by the ancient rents and customary services, and thereupon admits him tenant to the copyhold, according to the form and effect of the surrender.”*

Now what is this but a description of one of the lowest forms of the Ulster custom, as it is called?

The essential part is that one tenant sells his farm to another, to hold of the same lord, at the same rent.† The recognition of the new tenant by the agent was a mere formality; and the attempt to

* Blackstone, *Commentaries*, B. ii. c. 22.

† The following Acts relating to copyholds have been passed in the present reign:—First, commutation of rents, reliefs, customary services, fines, etc., were facilitated. The landlord's rents and interests are changed, by commutation, into a rent-charge varying or not, as agreed, with the price of corn, and a small fixed fine (Stats. 4 and 5 Vict. c. 35, s. 14; 15 and 16 Vict. c. 51, s. 41). Facilities were given for the enfranchisement or conveyance of the freehold of such lands from lord to tenant—either in consideration of money paid the former, of an annual rent-charge varying with the price of corn, or of the conveyance of other lands (Stats. 4 and 5 Vict. c. 35, ss. 56, 59, 73, 74, 55; 6 and 7 Vict. c. 23; 7 and 8 Vict. c. 55, s. 5). It was provided also that the money paid for the enfranchisement might be charged on the lands by way of mortgage (Stats. 4 and 5 Vict. c. 35, ss. 70, 71, 72; 7 and 8 Vict. c. 55, s. 4). The compulsory Copyhold Act of 1852 is still more remarkable. Either landlord or tenant can compel enfranchisement (Stat. 15 and 16 Vict. c. 51). If the tenant demands it, he is to make compensation in a lump sum, on its completion; or in certain cases, it may be charged as a mortgage. If the landlord demands it, he is to get the compensation as an annual rent-charge issuing out of the lands, subject to the right of the parties, with the sanction of the appointed commissioners, to agree that the compensation shall be either a gross sum, or on a yearly rent-charge, or a conveyance of land (sec. 7). The rent-charge may vary with the price of grain, or be fixed, at the option of the parties or the discretion of the commissioner (sec. 41). These are instructive precedents.

make it more than a formality is a modern encroachment, the enforcement of which would be resented unless the incomer were notoriously unfit. In Ulster, during tumultuous times, both landlords and tenants had to dispense with much paper or parchment work: the entering of the tenant's name on the court-roll or book, and the transfer of the symbol, or one or other, was sufficient.

There is here surely enough to show the origin of what is known as the "Ulster custom." In reality it extended over Ireland; but in Ulster it has remained almost intact, because the political and religious causes that devastated the South, and as far as possible destroyed its ancient rights and customs, did not hurt the North. The prominent Ulster tenants were Protestants, so that the province was not wasted by the Penal Laws. They retained their arms, rose in defence of their custom more than once, and did not vote against their landlords. Thus they remained almost undisturbed until quite recently, when it was found that in one case the custom was not allowed in a law court.*

* It was a bad test-case; for the tenant was a priest. It is hard to know on what *principle* the Ulster custom should be disallowed, whilst other customs are admitted. The limit of legal memory applies to all or none. But in the case of *Grannel v. Hamilton*, before the Lord Chief-Justice and a special jury, certain specified customs are sanctioned for the three other provinces of Leinster, Munster, and Connaught. The Lord Chief-Justice said, referring to examples given of the custom: "The books showed that in Munster and Connaught two-thirds, and in *Leinster seven-eighths*, of the crop went to the out-going

Mutual dependence on each other's good offices drew together the British and Irish tenants in the years following the plantations. By offering a high rent, the Irishmen often retained their holdings.* The Catholics privately enjoyed the free exercise of their religion,† while the Scottish tenants began

tenant, leaving in the one one-third, and in the other one-eighth to the landlord or to the incoming tenant. This applied to uncertain tenures or to a yearly tenancy, or where the lease fell in on the sudden dropping of a life after the crop was sown. If the jury believed the custom as alleged on the part of the plaintiff to exist (that was a matter which they were seriously to consider), he could not yield to the requisitions of the (landlord) defendant's counsel, and tell them that such a custom was unreasonable or illegal. It was sufficient in his opinion, also, if the custom was proved to exist in the district to which the plaintiff belonged." After a short deliberation the jury found for the landlord defendant on one count, for the tenant plaintiff on another—"a verdict for the plaintiff on the ground that *by custom* he was entitled to his crops, and they assessed the damages at £276." However, "upon the application of defendant's counsel, execution was respited pending the decision of legal points, raising questions as to there being evidence of the custom, and of its being a reasonable and legal custom." —*Freeman's Journal*, Dec. 11th, 1869. The Lord Chief-Justice appears to take a view identical with that which we have already mentioned. Quoting Lord Coke on the way-going crop, he said: "Now that was Lord Coke stating the Common Law of England, which centuries ago was introduced into Ireland, and now formed part of the Common Law of Ireland." If the laws and customs ("*leges et consuetudines*") were made identical, as intended, then the non-recognition of prescriptions recognized in England requires to be accounted for.

* "They, finding the natives willing to overpaie rather than remove, and that they could not reap half the profit by the British that they do by the Irish," etc.—*Hibernica*. A Letter from Sir Thomas Philips to King Charles.

† *The Irish Rebellion, or an History of the Beginnings and First Progress of the General Rebellion, 1641*. In "*A Remonstrance presented to His Majesty by the Parliament, 1628*, it was complained that, as to

to complain of being persecuted by Prelacy. When they had just expected to reap the fruit of their labour, partly "by the cruell severitie and arbitrarie proceedings of the civill magistrate," but principally through "the unblest way of the Prelacy, our soules," they say, "are starved, our estates undone, our families impoverished, and many lives among us cut off or destroyed. . . . The Prelates with their faction have been injurious not only to the spirituall but also to the temporall estates of most men; for under colour of church lands, they injuriously seized into their hands much of the best lands in every county, so that there is scarce a gentleman of any worth whom they have not bereaved of some part of his inheritance—few daring to oppose their unjust demands, and if any did, none able to maintain their just titles against their power and oppression."* The Irish gained a respite by this hostility between Prelacy and Puritanism; it was complained that their schools began to be universities rather than schools, from the numbers attending them. They were fond of learning; and it was always easy to empannel a jury to determine boundaries, for it was found that a majority (ten or eleven out of twelve in one case) of the native jurymen could speak Latin.†

Ireland, 'without controule the Popish religion is openly professed and practised in every part thereof.'

* *The Humble Petition of the Protestant Inhabitants of Antrim, Downe, Tyrone, concerning Bishops*, 1641.

† *Ulster Journal of Archaeology*.

Whilst their religion and education were permitted the natives did not openly revolt against rack-rent. But in opposition to this and all such exactions they made use, as it served them, of passive resistance, or of the unavowed help of the wood-kern. Rather than see his land wasted by nomade graziers, or his harvests harried by flying free-shooters,* the undertaker comprehended that it was better for him to keep on a friendly footing with his native neighbours and tenantry, by granting them fair terms and consenting to their customs.

It would appear that, whilst the Irish and British tenants were brought into amical acquaintance by a sense of common wrongs, the alien undertaker and Irish chief, new-made into a feudal lord, were occasionally leagued by a feeling of selfish interest. Both had usurpations to make and to protect. Those of the former have been detailed; those of the latter were in the circumstance of his transformation. The elective chief who had, by benefit of feudal law, been privileged as a despotic master, could not be favourably regarded by members of the clan, his electors, whenever he really sought to show that he was no longer their minister but their lord. Such cases

* See p. 54. "*A Direction for the Plantation*," by Thomas Blenerhasset; who adds an additional trait to his picture in this invitation:—"Art thou a gentleman that takest pleasure in hunt? The Fox, the Woolfe, and the Wood-kerne doe expect thy comming; and the comely well-cabbazed Stag will furnish thy feast with a full dish. There thou shalt have elbowe roome, the Eagle and the Earne and all sorts of highe flying fowles doe attend thee."

would occur, more especially when the Irish lord had been an English favourite rather than a representative of the tribe, whose true chief he may have ousted. It is also conceivable that a feudalized Irish chief might prefer even British tenants, trained to revere lords, to Irish tenants, tenacious of independent rights and co-equal privileges. Hence, although narrated by a hostile writer, we may concede the probability of the occurrences mentioned in the following statement, more especially from what we are told of Sir Feilim's early training as a law student in London: * "Sir Phelim O'Neale and many other prime-movers in this rebellion † (1641) had not long before turned their Irish tenants out of their lands, as some said to me (when I enquired the reason of their so doing) even to starve upon the mountains while they took on English," whom they found more profitable under the circumstances. It was a matter that attracted much notice, and was esteemed by many as conducing highly to the security of English interests and of the plantation. Such comment, however, marked it out as exceptional; whilst, so far from being a security, the injustice proved a root of injury to the social state which sanctioned and commended it.

* "His education for a great part of his youth was in England. He was admitted a student of Lincolne's Inn, and there trained up in the Protestant religion, which he changed soon after."—*The Irish Rebellion, or an History of the Beginnings and First Progress of the General Rebellion, 1641.*

† Ibid.

It is manifest that many prejudices must have fallen when English and Scottish lords were found taking Irish tenants, and Irish lords accepting British tenants as occupiers upon their lands. Wrongs were not the invariable consequences, whilst neighbourly kindness was the result of acquaintance and good will ripening into respect and friendship. So it is told : " And for the ancient animosities and hatred which the Irish had ever been observed to bear unto the English nation,* they seemed now to be quite deposited and buried in a firm conglutination of their affections and national obligations passed between them. The two Nations had now lived together forty years in peace, with great security and comfort, which had in a manner consolidated them into one body, knit and compacted together with all those bonds and ligatures of friendship, alliance, and consanguinity, as might make up a constant and perpetual union betwixt them. Their intermarriages were frequent, gossiped, fostering (relations of much dearness among the Irish), together with all others of tenancy, neighbourhood, and service, interchangeably passed among them ; nay, they had made it, as it were, a kind of mutual transmigration into each others' manners, many of the English being strangely ' degenerated ' into Irish affections and customs, and many of the Irish, especially of the better sort, having taken up the English language, apparel, and manner of living in their houses."

* *The Irish Rebellion, &c., 1641.*

Taking these circumstances into consideration, it is easy to comprehend how the Irish tenantry, even under their new lords, won back their ancient rights and privileges.

CHAPTER VI.

LANDLORDS' GRIEVANCES: INSECURITY OF TENURE AND UNSETTLED RENTS.—THEIR AGITATIONS FOR FIXED RENTS.—SPECIAL TROUBLES OF IRISH LANDLORDS.—LAND-HUNTERS AND LAND-HUNGER.—A LANDLORD-REBELLION.—SPECULATION ON THEIR SPOILS.—AGRARIAN ASPECT OF THE INSURRECTION OF 1641.—THE CROMWELLIAN SETTLEMENT.—EVICTING THE LANDLORDS.—PARTIAL ABOLITION OF LANDLORDISM.—PRINCIPLES OFFICIALLY AFFIRMED.—EQUIVALENT FOR EJECTMENT.—COMPENSATION FOR IMPROVEMENT.—RECOGNITION OF THE CUSTOMS OF THE COUNTRY.

INSECURITY of tenure and uncertainty of rents, in recent days the confessed grievances of the tenant and the provocatives to agrarian turmoil and insurrection, were formerly the complaints of the lord-tenant also, and the urgent causes of baronial protests and rebellions of the gentry. Not until after many endeavours and much agitation did the lord-tenant class secure settled rents, and free themselves from the uncertain render of knight's service. Various fines and levies* exacted by their head-lord, the king, had burthened this tenant-class, just as their variable rents have been complained of by their under-tenants. At the Restoration, when their lord's power and regal

* See p. 47, note.

position had been rendered weak and dependant, they pressed and gained their point, finding in his difficulty their opportunity. In Ireland, insecurity of tenure was for ages as characteristic a complaint of the landlord class, as oppressive uncertainty of rent has been of the cultivators. At the close of all successful revolutions in England, as it was seen that the Irish, or Anglo-Irish, had not been so quick to rebel against previous governments, it happened that Ireland became not only the battle-ground, but (when they succeeded), the plunder ground of English revolutionary parties. Partisans of every new English insurrection, on its triumph, obtained their reward in Ireland, not only at the expense of the Irish chiefs, but at the cost of the preceding swarm of partizans of an out-worn English form of government. Since the recompense of the revolutionists was that they should be made lords over the productive cultivators, the landlord-class was principally subjected to change, and the manor had much more frequently to witness the eviction of old and entrance of new tenants, than the cottage.

It was impossible to foster an appetite for reward, such as this, without the danger of a land-hunger becoming developed in times of peace. In a war of chicane, those new adventurers and officials who lacked property,* found means of obtaining it by the

* "They" [the insurgents] "spake with much scorn and contempt of such as brought little with them into, and there having planted themselves in a little time contracted great fortunes."—*An History of*

discovery of flaws in grants, and taints in possessors and grantees. Such was one of the causes of the Great Rebellion of 1641. Among the urgent complaints of the leaders, we find protests against "the avoidance of Grants of Land and Liberties by Quirks and Quiddities of the Law, without reflecting upon the King's Royal and real intention," against "the Restraint of purchase in the meer Irish of Lands in the escheated counties, and the taint and blemish of them and their posterities," which "doth more discontent them than that plantation Rule, for they are brought to that Exigent of povertie in these late times that they must be sellers and not buyers of Land."* Paper petitions were one of the weapons used by land-hunters in their war of chicane. A year before the rebellion, a speaker in the Upper House declared that: "These words, '*nullus liber homo ejicitur e libero suo tenemento in præjudicium parium*,' live in the Rolls, but they are dead where property and freehold are determined by paper petitions ;"† and in the accusation of Strafford, it was charged against

the Rebellion, etc. Sir John Davis had previously had to remark that Fitzthomas of Desmond rose from a mean to a mighty estate, by means of exactions of various kinds: "insomuch that his ancient inheritance being not one thousand markes yearly, he became able to dispense every way ten thousand pounds per annum".—*A Discoverie of the True Cause, etc.*

* A copy of a Letter directed to the Lord Viceroy, Cossilough, from the Rebels of the County of Longford, Nov. 10, 1641: Borlase, *History of the Execrable Irish Rebellion*. Appendix v. London, 1653.

† A speech made by Captain Audley Mervyn to the Upper House of Parliament in Ireland, March 4, 1640.

him that he had "commanded laying and asseising of souldiers upon his Majesties subjects in Ireland, against their consents, to compell them to obey his unlawfull commands, and orders made upon paper petitions."* Besides, Irish lords wished to be restored to their old properties in the north, usurped by aliens, whilst they, "the rightful owners, now begge about Ireland, though of most high blood and birth among the nobles of that country."† It was sought likewise that the merchants and traders of the Irish nation should enjoy as much freedom in their trade, and pri-

* *A Bill of Attainder passed against Thomas Earle of Strafford, 1641.* Such abuses were of old date and have endured long. In Elizabeth's time an English visitor commented on "the abuse of souldiers", and "the purloining of cessors and constables, the number of freedoms holding only by concordatums, the annoyance and hurt which the poore farmer endureth, as I know them to be intolerable." *Campion's Historie of Ireland*, p. 126. The Lord Deputy's speech, a type of Vice-regal utterances, in reply to Speaker Stanihurst, whilst avowing, alighted the grievance: "Hither I came in spring, here I spent my summer, I return in the fall of the leafe; now is the time, intimate your defects in demands and see whether I will tender your common-wealth—I mean not the pretended common-wealth seditiously promoted in *Tom Loodle's* rhyme, but some good and substantiall matter worth the hearing. As for his complaint of cesse or imposition it savoureth either of hateful malice or childish folly." p. 130.

† *The Demand of the Rebels of Ireland unto the State and Councill of Dublin, Feb. 3, 1641.* London: R. Barker, 1641. So numerous were those dispossessed and impoverished gentlemen that, with reference to them, an Act was passed (10 and 11 Car. I. sess. 4, cap. 16) ordering that "none, having no estates of their own, nor means, nor support from parents or kindred, shall walk up and down in the country with one or more greyhound or greyhounds, or otherwise shall coshere, or lodge, or cess themselves, their followers, or greyhounds, upon the inhabitants of the country, or exact meat or drink."

vilege in their customs in England or Scotland, as the Scots had been lately granted in England, and the English in Scotland. Further, they all combined to require their due share of influence in the government of their country, and the right of public liberty for their conscientious faith.

The land-hunters having driven these holders of lands to bay, rejoiced, awaiting till they should be torn down by the dogs of war, and their spoils divided. In the meantime they speculated upon the event. King Charles was urged to affirm immediately (lest the insurgents should repent and make terms), that "2,500,000 acres," of the lands to be forfeited, "equally taken out of the four provinces, may be allotted for the satisfaction of such persons as shall disburse any sums of money for the reducing of the rebels there." And the King agreed, not daring to do more for the Irish Royalists (with whom he pactised, and who were fighting his battle), than to add the remark that he assented: "relying upon the wisdom of his Parliament, without taking time to examine whether this course may not retard the reducing of the Kingdom, by exasperating the Rebels and rendering them desperate of being received into Grace, if they shall return to their obedience."*

Although the Rebellion was started by a royalist gentry and clergy, under the provocations named, it

* *Propositions made in Parliament, with His Majesties gracious answer and Royall assent.* London: R. Barker, 1641.

must have been favourably regarded by those native husbandmen who had been ousted from their lowland fertile farms and driven to the mountains, as also by those who remained at rack-rent. Whilst the latter felt that they starved to fatten foreigners, the resentment of the former kindled, as looking down from the bleak hills they saw the homesteads of their fathers in the hands of those who spurned them as outlaws. Though there were many bonds of kindness, there were not a few sentiments of dislike to intruders. So it happened that, at the commencement of a Rebellion, around which the most preposterous accounts of slaughter have been heaped, the Irish generally contented themselves with resuming possession of their homesteads, and expelling the settlers. Some of the plantation-colonists journeyed to Coleraine, Derry, and other northern ports. Many compounded and got leave to proceed to Dublin. Out of Cavan county, according to the testimony of the Irishman, M. Creighton, "who by his charitable relief of great numbers of them preserved them from perishing," there passed fourteen hundred persons in one company, and, in another, five hundred from Newtown in Fermanagh.* It is not to be thought that

* *The Irish Rebellion, or an History, etc.*, 1641. The character of some of their complaints may be judged from the Deposition of Thomas Johnson, Vicar, Co. Mayo, who "saith that the rebels in the baronies of Costelloe and Gallen, in meere hatred and derision of the English and their very cattle, and contempt and derision of the English laws, did ordinarily and commonly prefer bills of Indictment, and bring the English breed of Cattle to be tried upon juries, and

in an agrarian strife—such as this partial uprooting of the Plantation—there were not deplorable instances of private malignity, the hoarded vengeance for barbarous treatment. Stragglers were killed by stragglers; rumours begot rumours and slaughters; but the accounts of the numbers slain were fabulous exaggerations. It is certain that if there was cruelty for cruelty, there was also kindness for kindness. Natives often protected their British and Scottish neighbours from strange bands; landlords not rarely cast themselves upon the mercy of their tenants. The mother of the chief of the Rebellion, Sir Phelim O'Neill, protected herself the lives of numerous settlers. Such admissions appear even in the frenzied tracts, where the apparitions of Protestant Ghosts* are solemnly appealed to, and their reputed appearance and declarations above water quoted in evidence of violence done by drowning.

A period of wars was ended by the ruthless sword of Cromwell. Then, after mere provincial invasions, confiscations, and plantations, came the Cromwellian scheme of Settlement, whereby three-fourths of the whole country were seized upon. The principal inha-

having in their fashion arraigned those cattle then, their scornful judge, sitting amongst them would say: 'They look as if they could speak English, give them the booke and see if they can read,' pronouncing the words '*legit an non?*' to the jury; and then because they stood mute and could not read, he would and did pronounce judgement and sentence of death against them, and they were committed and put to slaughtering." *Jurat*, 14th Jan., 1642. *Irish Archaeological Society's Tracts*, 1843. Statutes of Kilkenny, note.

* *The Irish Rebellion, or an History*, etc., 1641.

bitants of Ulster, Leinster, and Munster were driven into Connaught, and retained there by a line of military settlers, whilst alien task-masters were distributed anew over the desolated provinces, in their stead. The history is told in an admirable work :* here it is only necessary to draw attention to the change effected, and to certain principles established or confirmed by the Cromwellian Settlement.

The act of Transplantation was simply an act of Eviction, remarkable for the quantity of ground "cleared," and for the class of tenants upon whom notices to quit were served. The evicted were, prominently, the upper-tenants, or landlords ; they were turned out for (alleged) non-payment of their render or service, *i.e.*, for breach of fealty.

Two classes of persons were excepted from the eviction : first, those who had regularly paid, that is, who could prove their "constant good affection ;" and secondly, "all husbandmen, plowmen, labourers, artificers, and others of the inferior sort," according to the provisions of the Act. To this second class, "mercy and pardon for life and estate" were extended.†

Under-tenants, who were transplantable, were not bound to adhere to their immediate landlords, but might "sit down in Connaught, as tenants under the

* *The Cromwellian Settlement of Ireland*, by J. P. Prendergast, Esq. London : Longmans, 1865.

† Original Declaration given in Prendergast's *Cromwellian Settlement*, pp. 26, 27.

State.”* Thus, first in the “Composition of Connaught,” and again, in this “Settlement,” the English government decreed a partial abolition of Landlordism in Ireland, making its under-tenants to hold directly of the State.

The object was to de-grade the evicted upper-tenant or landlords to a lower condition. It was hoped they would be lowered to the rank of cultivators, earth-tillers, peasants, by having to work for themselves.† Those who had previously worked for them would serve to work for a new series of landlords. Thus there was left a population to continue land-customs, which the new lords (ignorant of land-culture, and able to obtain no other tenants) would gladly recognise.

How did the evicting landlord—the Parliament—deal with its evicted tenants? What principles did it establish? The answers are most important :—

FIRSTLY : The evicted got an “equivalent” on eviction.

SECONDLY : The “custom of the country” was officially recognised.

1. The evicted person got an estate in Connaught for his estate elsewhere, from which he was ejected. He was compelled, as it were, to sell out and accept payment in kind. The recognition in him of a right to compensation, after he had failed in his render, was

* Prendergast's *Cromwellian Settlement of Ireland*, p. 32.

† Ibid, p. 28.

a recognition of his occupancy right ; and he obtained compensation in proportion to his crops,* etc. From end to end of Ireland this was so ; it would have established what is called the Ulster custom over the whole country, if it had not already found it so established, and simply acted on its principles. But certainly it did confirm those principles, and tended to make the people hold to them as to ancient, general, legalized rights, when newer landlords attempted to ignore them. The local designation of the custom is only due to the fact that in Ulster it has remained almost undisturbed. Well-defined traces of its existence are still to be found in all the provinces of Ireland.†

* "Pierce, Lord Viscount Ikerrin : seventeen persons, sixteen acres of winter-corne, four cows, five garrans [horses], twenty-four sheep, two swine. For each acre of winter-corn, three acres of land were to be assigned, summer corn and fallow being included ; for each cow or bullock (of two years old and upwards), three acres ; . . . for every three sheep, one acre ; and for goats and swine proportionably. These [first] assignments were only conditional ; for at a future day other Commissioners were to arrive and sit at Athlone, to determine the claims, i.e., the extent of lands the transplanter had left behind him, and to distinguish the qualifications, i.e., the extent of disaffection" [non-payment of render] "to the Parliament, by which the proportion to be confiscated was to be regulated, and an equivalent called a Final Settlement, was to be in Connaught."—Prendergast, *Cromwellian Settlement of Ireland*, pp. 33-4.

† Townland Valuation Committee Report, 1844 : Examination of A. Senior, Esq. :—"1067. The tenant-right does exist in every part of Ulster, but it varies in every county, and in different parts of the same county" (like copyhold customs with manors). Land Commissioners' Report, 1845 :—Examination of Mr. Griffith, Government Engineer and Valuator :—"70. The counties in which I know it to

2. There was an explicit official recognition of the "custom of the country." Evicted upper-tenants or landlords were allowed to come back or send back, in order to reap and carry off their waygoing crops, charged with a varying percentage to the new landlord, according to the custom of the locality. Thus the Cromwellian officers and soldiers (the new landlords) whose lots had fallen in the district called the Rower, in the county of Kilkenny, "were declared entitled to have an allowance for the standing of the corn on the lands fallen to them for their arrears, from the 1st of May last, [1654] till December following, according to the custom of the country, not exceeding

prevail are Armagh, Down, Fermanagh, Tyrone (Ulster), and *Sligo*" (province of Connaught). "It prevails to a certain extent in the adjoining counties, but not to the same extent, as it does in these, as far as I am aware." "71. I believe [the payment has reference] to possession alone; in some instances, it may have regard to improvements, but generally it is for possession alone." "79. In the County Tipperary can you say whether the tenant-right prevails there? The tenants generally hold under leases there; but the tenant-right *does* prevail to so great an extent that few are bold enough to take the land where a tenant has been dispossessed." "83. In the County Tipperary is there any particular district much subdivided? I think not, beyond the precincts of towns." Examination of Mr. W. Pidgeon, land-agent to the Incorporated Society of Dublin, for promoting English Protestant Schools:—"29. Is the tenant-right or sale of good-will recognized under the Society? It is to a certain extent, particularly in the North of Ireland; they recognize it to the fullest extent there; and in fact, they do so everywhere. They only require that the name of the incoming tenant should be submitted to them and approved of." "34. Is there any arrangement existing there [the South] between the incoming and the outgoing tenant similar to the tenant-right? They have rules among themselves, but it is not a

a fifth sheaf." The evicted landlords of Waterford county, having complained from Connaught that those who tended their crops were interfered with, "the Government ordered that the Commissioners of Revenue of the precinct where the respective crops were, should permit the wives, and such servants of theirs as were permitted to stay, to receive the benefit of the crop, having discharged the contribution due thereout, and allowing the new proprietors an eighth sheaf, or such proportion as is usually made in those parts according to the custom of the country."*

The caretakers of the evicted were to have "cabbins or other habitacons,"† and grazing ground for their

recognized system in the South as it is in the North ; there is greater confidence among all the relations in the North than in the South ; they have greater confidence in their landlords. They do it in the South, but it does not exist as a system. I think it an admirable principle, and it ought not to be put a stop to." Examination of Richard Byrne, Esq., Crossmakee, Louth parish (province of Leinster):—"96. With respect to the tenant-right, or the sale of good-will, does that extend to this district? Yes; it is generally allowed." Thus its existence is recorded not only for Ulster, but for counties in Connaught, Leinster, and Munster. By report of Cork press (*v. The Times*, Nov. 18, 1869) its existence near Kinsale is mentioned as permitted. The letters and speeches connected with the recent Longford election show that it is recognized in that county also. The fact of the existence of the same custom in localities so diverse and divided indicates that it was previously a general custom common to all.

* Prendergast, *Cromwellian Settlement of Ireland*, pp. 35-37.

† In 1644, a French visitor describing what he saw in Ireland says: "The gentlemen eat a great deal of meat and butter and but little bread, drink milk and beer into which they put laurel leaves, and eat bread baked English fashion. The poor grind barley and peas between two stones and bake it upon iron griddles. . . . The towns are built

beasts. Those of the Cromwellian soldiers who became settlers, as many did in Tipperary, were men not likely in after days to allow new comers to wrest their customary rights from them : for example, when, on the Restoration, it was sought to remove some of them, even though they were offered "reprisals" or compensation in other lands, the "Phanatic Plot of 1663" was formed. The King was deceived, said one of them, if he thought their lands could be taken and

in the English fashion." . . . The cabins, in the country, are of this fashion. "There are four walls the height of a man, supporting rafters, over which they thatch with straw and leaves, without chimney, the fire in the centre." Castles were usually formed of four strong walls. Like Paine, he remarks on the hospitality of the people—"The Irish are fond of strangers and it costs little to travel among them;" as to their customs, he observes that the Irish (including settlers) in the South and East followed English, those of the North, Scottish customs, and that the rest are denominated "sauvages" (perhaps "wild Irish").

"The Irish whom the English call savages," he adds, "have for their head dress a little blue bonnet, raised two fingers' breadth in front, and behind covering their head and ears; their doublet has a long body and four skirts; and their breeches are a pantaloon of white frize, which they call 'trowsers'; their shoes which are pointed, they call brogues with a single sole. . . . For cloaks they have five or six yards of frize drawn round the neck, the body, and over the head." *The Tour of M. de la Boullaye le Gouz in Ireland, A.D. 1644. Translation, London, 1837, pp. 39-44.* The word "trowsers" is a modification of the Irish name ("truis") for an Irish article of apparel which attracted the attention of Blennerhasset as well as of Le Gouz, and which both English and French appear to have adopted from the Irish "sauvages." The wearing of "trowsers" by Irishmen was not expressly made penal, though probably forbidden by the acts against Irish fashions in dress. They were ordered, under pain of forfeiture, by 5 Ed. IV., c. 3, to go like Englishmen in apparel, to shave their moustaches ("Beard above the Mouth"), to take English surnames of towns, as "Sutton," "Trim," &c.; of colours, as "White;" of arts or

given to others, "for we will join our heads together again, and have one knock for it first, my life for it." *

Few of the thousands who were allotted lands, settled upon them. The majority had neither skill, appliances, funds, nor taste for rural work in a hostile and devastated country. Some of them preferred to remain in the towns where Protestant artizans enjoyed a monopoly of labour. With this privilege the new settlers had another advantage, for if, within the

sciences, as "Smith," &c.; or offices as "Cook." A later act, 28 Henry VIII., c. 15, entered more into particulars. None of the king's subjects should be shaven above the ears, wear their hair in long Locks or Glibbes, nor hair on their upper lips called Crommeale, nor have any Shirt, Smock, Kercher, Bendell, Neckerchour, Mocket, or Linnen Capp coloured with saffron; nor above seven yards of cloth in their Shirts or Smocks. No loyal woman should wear any Kirtel or Coat tucked up or embroidered with Silk, or laid with Uske after the Irish fashion. None should wear Mantle, Coat, or Hood made after the Irish fashion. Such penal laws show the Irish clans dressed well. Writing in Elizabeth's reign, Spenser remarks that these enactments were not enforced by the Anglo-Irish: they preferred to become Hibernicised. The mantle was good where there were no inns, the leather quilted jack for journeying and camping. The women wore "a great Linnen Roll" to keep their heads warm after cutting their hair in any sickness, and used besides "thick folded linnen shirts, long sleeved smocks, halfe sleeved coats, silken fillets," &c. The Irish horseman was the image, in apparel and armour, of the knight described by Chaucer, Sir Thopas: "as hee went to fight against the Gyant, in his robe of Sheklaton, which is that kind of gilded leather with which they use to embroider their Irish Iackets. And there likewise, by all that description, you may see the very fashion and manner of the Irish horseman, most truly set forth, in his long hose, his ryding shoes of costly Cordwaine, his hacqueton and his haberion, with all the rest thereunto belonging."—*A View of the State of Ireland, by Edmund Spenser, 1596, Dublin: 1633, p. 48.*

* *A View, &c. Appendix iii. p. 211.*

walls of certain cities and towns they found a vacant place or waste, they had but to enclose, build and live upon it, when the Commissioners would assign or set it out to them "without any Fine or other Consideration."* Besides the Officers proved themselves as mindful of their selfish interests as the Planters; to the State's theoretical scheme of colonization, they preferred their own practical views of personal profit. They bought up for trifling sums the debentures of their men, who were urged to sell by want of knowledge of husbandry, by necessitous circumstances, or by "divers aweings" on the part of their superiors. In one case thirty-four soldiers assigned their lots to their ensign for £136; in another a captain obtained the allotments of his troop for a barrel of beer; and sometimes the soldiers coming to settle were shown a desolate bog instead of their fertile allotment,† obtained a petty sum for it, or were glad to exchange it for horses to ride off on. The bearing of the new Settler landlords towards the terre-tenants was almost a repetition of the conduct of the Planters. They had need of them, retained them, and oppressed them with exactions intolerable to all but to men who stood in peril of deportation or death. They saw that none could obtain so much from the soil as the Irish hus-

* *An act for the Speedy and Effectual Satisfaction of the Adventurers for Lands, &c.* London: printed for John Fields, Printer to the Parliament of England, 1653.

† *Reflections upon some Persons and Things in Ireland, by Letters to and from Dr. Petty*, p. 120. London: 1660. Prendergast's *Cromwellian Settlement*.

bandmen, and that none would yield up so much of the fruit of their labours to them. The Irish women were skilled in dressing flax and hemp and weaving woollens.* Five per cent. of the men were apt at masonry and carpentry. Besides, all were satisfied to live on roots, fruit, and the milk of their herds and flocks, and so were able to furnish their taskmasters with grain. Spenser's observation still held true: "the country people are great plowers and small spenders of corne," having so been able to send "great plenty over the sea."†

The tempest that devastated the castles swept over the cabins. The cultivators bent to the storm, but sprang up when its strength had passed. The Settlers, as well as the Planters, soon discovered that their best policy was to conciliate them, and that this could only be done by strengthening their tenures and confirming their customs. If any were slow in learning, their minds were quickened by forays from disbanded swordsmen—"Tories," who succeeded to the Wood-kern in official outlawry and agrarian offices. Thomas Blennerhasset, the Ulster Planter, complained of "the Woolfe and the Wood-kerne" and proposed periodical hunts after both, so a Cromwellian settler, Major Morgan, puritanically pious, observes: "We have three beasts to destroy that lay burthens upon us. The first is the Wolf, on whom we lay five pounds a head if a

* *Cromwellian Settlement*, p. 58. The Great Case of Transplantation discussed. London: 1655.

† *A View*, &c., p. 97.

dog, and ten pounds if a bitch. The second beast is a Priest, on whose head we lay ten pounds—if he be eminent, more. The third beast is a Tory, on whose head, if he be a public Tory, we lay twenty pounds, and forty shillings on a private Tory.”* But between planning and performance there was a difficulty. It was impossible for the army to destroy either the spiritual or the temporal outlaws, skilled in the resources of woods, and bogs, and hills, their native fastnesses. So another Settler was forced to re-echo the Ulster Planter’s observations, seeing that even in the counties near Dublin no Settler was safe for a night, but such as lived in strong castles, and even there he was liable to be surprised. His Irish neighbours might not understand English, and suppose they set up the hue-and-cry “or hullalloo, as they call it,” they would (if they had reason to be covertly unfriendly) be sure “to send it the wrong way or at least deferr it until the offender be far enough out of reach; and not unlike but the persons busiest in pursuit may be them that did the mischief.”† Opposing, as before, passive resistance and indirect force to oppression, robbery and intolerance, the natives maintained their position and won back their rights. Nor could the penal enactments of the State prevent the races from again comingling. Intermarriages were of frequent occurrence,

* *Cromwellian Settlement*, p. 151. Burton’s Parliamentary Diary.

† *Ibid.*, p. 75. England’s Great Interest in the Well Planting of Ireland, by Colonel Richard Lawrence, 1656.

and where Irish wives only were to be had, it does not surprise us to be told that "many of the children of Oliver's soldiers in Ireland cannot speak one word of English." * They were not, on that account, the less strenuous defenders of their rights and privileges as "estated tenants," against all comers.

* *Cromwellian Settlement*, p. 130. True Way to Render Ireland Happy and Secure, 1697.

CHAPTER VII.

THE LANDLORD AGITATION FOR FIXED RENTER SUCCESSFUL.—KNIGHT'S SERVICE AND FREE SOCAGE TENURES.—VARIABLE EXACTIONS ABOLISHED.—EVICTION OF CROMWELLIAN LANDLORDS.—THEIR "PHANATIC PLOT."—COMPENSATION FOR DISTURBANCE GRANTED.—THE WILLIAMITE REVOLUTION.—AMALGAMATION.—TREATY OF LIMERICK BROKEN.—PENAL ACTS.—DESTRUCTION OF PAROLE RIGHTS.—RECOGNITION OF CUSTOMARY INTERESTS.—A TENANT-RIGHT ACT WITH RETROSPECTIVE CLAUSE.

THE landlords settled by Cromwell in Ireland held their lands under settled services and fixed rents, as the grants were made to them in free and common socage. Their condition, therefore, was likely to excite the envy of those royalist gentlemen, who, at the restoration of the monarchy, regained their estates to hold under their former honourable but burthen-some tenure by knight's service. The few that in Ireland escaped transplantation must have apprehended that their necessitous king would be sure to revive all the old exactions. In accordance with the obligations of their tenure, each was willing to do him "homage,"—kneeling, professing to be his man, and receiving the kiss. But it was another thing to be ready to yield him "aids" in money, to provide the

costs of knighting his son and the fortune for marrying his eldest daughter, should he be blessed with children. Again, if the tenant died, his heir should pay a "relief" or fine, on coming into possession, but if he were in his minority, then the king would have the "wardship" of him and his lands, until he should come of age, when no account of profits was condescended. On the contrary, the heir should sue out "livery," paying to his lord a half-year's profit off the property. Besides, the king might think well to exercise his right of "maritagium" and dispose of his ward's hand in marriage; if he declined the match, he was fined in a large sum, and if he married without his lord's consent, the fine was doubled. In addition to these obligations, which were due from every tenant who held by knight's service to his lord, those who held of the king, directly, were mulcted for "primer seisin," for knighthood fees, whether they desired the honour or not, and for alienation in certain cases. They had, likewise, to appear when required to take the oath of "fealty," and to turn out for military service, but it was possible at times to commute this for "escuage," or a fine in money.

Now, the tenant who held by free and common socage was safe from the burthens of military service, wardships, maritagium, and other uncertain and oppressive exactions. Homage he yielded,* when it was

* By Stat. 17 Ed. II. it was enacted that "when a freeman shall do homage to his lord" [being a subject] "of whom he holdeth in

required, and he paid a fixed rent. Agricultural services had sometimes accompanied this but were generally commuted for a fixed rent. The "relief" or fine paid by the heir was a fixed fine, equal to one year's rent. Sometimes the oath of fealty, the customary "aids," and suit at court, constituted all the render required.

After the Restoration, the lord-tenants in England so urgently pressed their head landlord, the king, who was then in a dependent state, that he was obliged to yield to the demands of these agitators. The variable exactions of tenure by knight's service were abandoned, and the beneficial socage tenure, with its fixed rent and services, was granted them instead. This Act was made retrospective, so as to cover the Republican period, during which time the sweets of socage

chief, he shall hold his hands together between the hands of the lord, and shall say thus : ' I become your man from this day forth, of life, limb, and earthly honor. I will be true and faithful to you, and bear you faith for the lands I hold of you, saving my faith to our sovereign lord the king and his heirs.'"

Lord Lyttleton says : " After the vassal had said this, he was to receive a kiss from his lord and then rising up was to take the oath of fealty. The ceremonies denoted (according to Bracton, l. ii. c. 35) on the part of the lord, protection, defence, and warranty ; on the part of the tenant, reverence and subjection." *History of Henry II.*, by George, Lord Lyttleton, B. ii., p. 211, 1768. Homage was made by copyholders as well as by other tenants. There were varieties in the form of homage. A singular child's play, descending from a time when such a feudal system was in force, is still practised in Dublin, parts of Ulster and elsewhere in Ireland. One child places his hands together, another takes them between his [as the lord took the vassal's] and holding them firmly, asks : " Will you be my man ? " The other

tenure had actually been extended and enjoyed. Thus, the Court of Wards and Liveries and all its dependencies, were declared legally abolished from the 23rd day of October, 1641. All tenures of Honours, Manors, and so forth, were freed from the incidents of knight's service, and turned into free and common socage, whilst all tenures to be created by the king were guaranteed to be of the same beneficial nature.*

But, in obtaining these advantages for themselves from their landlord, the king, the lord-tenants were careful to provide that the terre-tenants should not expect like deliverance from all their exactions. Accordingly it was declared by the act, which freed them from alienation fines, that those due by particular customs of particular manors should not be abolished, nor anything altered in the incidents of tenure by copy of court-roll.

answers: "I will." "Will you carry my can?" "I will." "Will you dig my grave?" "I will." "Will you fight my fairies?" [a corruption of "frays."] "I will." Then, the questioning child stoops forward as if to give him the kiss, but in the play, they merely puff breaths at each other. The holding of the hands is to prevent them from being used in defence, as commentators have supposed the lord held the vassal's hands until he was sworn, through fear of an act of treachery. If the child who is questioned answers in the negative, he is driven away with buffets, as doubtless would have been the fate of any recalcitrant vassal. A memory of suit and service at court still prevails in parts of Ulster. By the child's play it would appear that the digging the lord's grave was a feudal obligation, as was the building the chieftain's tomb under the Irish law.

* Stat. 12, Car. II., c. 24, England; Stat. 14 and 15, Car. II., Sess. 4, cap. 19, Ireland.

Even this, however, was an official recognition of local customs.

It is instructive to remark how the villeins were succeeded by the lords in agitating for fixed render, and how these, in our days, have been followed by the terre-tenants in Ireland. When the power of the monarch was strong, he could disregard the protest of the unjust among his nobles, and confirm the claim of their villeins to fixed rents. At the same time he pressed upon his own lord-tenants with many and variable burthens.* When the king's power had become weak, his tenants forced him to abandon these exactions, and grant them fixed rents. At the same time they took care that their own under-tenants should not share in this deliverance from fines, and gradually in Ireland they increased their exactions,

* The variable nature of the exactions and services to which knight's tenure was subject, often at the king's pleasure, constituted uncertainty of render, rather than the mere amount paid as rent. This might be certain or fixed. Thus in an Inrolment in the third year of James I., he writes : "To the erle of Devonshire, our levetenante of Irelande, Right Trustie, etc. Whereas at the suite of Raphe Segerson and Joane, his wife, late of our Citie of Dublin, by our letters of the 12th September, in the seconde yere, we signefyed our pleasure that you should accepte their surrender of the townes and landes of Ballyhowskett, Balleenefraghe, Clanmore in Ittye, and Balleencharrie in Co. Wexforde, whereof the sayd Raphe and Joane, his wief, were seized in fee simple, and grante the same unto the sayd Raphe and Joane for ever, with a reservation of a certaine chiefe rent to be holden, as of our Castle of Dublin by Knighte Service," etc. They having died it is confirmed to John Segerson, their heir "yieldinge a certaine chiefe rente." *A Repertory of Inrolments in the Patent Roll of Chancery in Ireland*, vol. i. pt. i., p. 247.

encroaching upon beneficial customs and abolishing parole rights. This conduct caused agrarian tumults, as of old the riots of villeins were caused. The power of the lords, however, has waned after that of the king, and the power of the commons simultaneously increasing, it is from the elected representatives of the commons that the terre-tenants have obtained redress. They, in their turn, have required fixed rents, and, to a certain extent, their demand has been successful. But, it was neither so revolutionary a demand as that of the lords, seeing that it had ancient custom and precedent to adduce, nor has it been so completely confirmed, seeing that the power of their lords has not waned to the same extent as had the power of their lords' landlord, the king.

In the reign of Charles, however, the earth-tiller was not forgotten. It was prescribed* that, from May 1st, 1666, no cottage or cabin should be set or let, except in towns, unless the lessee should be given to hold with it at least one acre of land, plantation measure. This was a provision for the labouring class whose condition, depressed and ignored by too many tenant-farmers in our days, has again become a matter of solicitude. Their interests were cared for in the plantation-schemes, but they have had to suffer from the encroachments of those who felt acutely when their own claims were impugned.

This Act of Charles ordered, to encourage the pro-

* Stat. 17 and 18, Car. II., Sess. 5, cap. 9.

duction of textile material, that one-eighth of the cottage-land should be sown with hemp or flax, providing further, that, in all arable lands, hemp or flax should be sown, in the proportion of half-an-acre for every thirty acres ploughed. During this reign, laws prohibiting the export from Ireland to England of various kinds of farm-produce were revived, and new acts of greater stringency passed.

The Restoration upset, to a certain extent, the Settlement of Cromwell, as by a new royal Act of Settlement it was provided that innocent Papists, *i.e.*, Catholics who had been loyal to the Monarchy, should be restored to the estates from which they had been ousted. Everyone who had received land under the Protector's rule was ordered to send in his claims, and it appears that 7,800,000 acres came under the cognizance of the Court of Claims. However, the royalist landlords were not all fortunate in their requests: the ingratitude of the restored Court was seconded by the resistance of the republican landlords. A conspiracy called the "Phanatic Plot of 1663" was formed to oppose eviction, and when one of the conspirators — Major Jephson — was about to be hanged, he declared that they had combined to rise against the corrupt conduct of the Court of Claims, in "turning poor Englishmen unjustly out of their lands" *—which they had seized upon by the sword under Cromwell.

* *Cromwellian Settlement*, App. III. Major Alexander Jephson's last speech upon the Gibbet, July 15, 1663.

It is to be noted that this new Eviction of Landlords was accompanied by an official confirmation of the same principles and customs as were set forth under the Transplantation. Every evicted upper-tenant, or landlord — although it was decided that he had no original right to his estate — was given “reprisals” elsewhere, as compensation for disturbance.

Little over a score of years was allowed to elapse during which the people might settle down to peace, when another successful Revolution in England occurred, and as the inhabitants of Ireland did not rebel simultaneously, they had again to endure war and to suffer extensive confiscations. The forfeitures of 1688 amounted to 1,060,792 acres. A repetition of former scenes took place. Some strange tenants were introduced by the new taskmasters; but generally their landlords, discovering that the natives were the more profitable, tolerated and oppressed the latter. Expulsions and extortions were checked by the Rapparees, those of the disbanded soldiers of the Jacobite army who preferred (to exile in France) the outlaw’s fate at home. Their bands were frequently led, as of old, by the heirs or younger sons of the dispossessed landlords; they levied black-mail as rent from the intruders, they preserved the ancient customs,* and they

* The Celtic Clan in offering, by free election, the Chieftainship — “*seniori et digniori*,” — to the eldest and worthiest, made Chief and Tanist (or, President and Vice-President) swear to a strict observance of ancient laws and customs. Thus Spenser: “*Ireneus*: They use to

caused parole rights to be respected. An intermingling of the new-comers and the old residents commenced and increased. In some of the eastern or more depopulated districts there was, of course, comparatively little of it; elsewhere it was so complete that the English embraced Irish customs, and children of William's as of Cromwell's soldiery could speak nothing but Irish.*

Before surrendering their last fortresses, the Irish had been able in this war to exact certain concessions

place him that shalbe their Captaine upon a stone always reserved for that purpose, and placed commonly upon a hill: in some of which I have seen formed and ingraven a foot, which they say was the measure of the first Captaine's foot, whereon hee standing receives an oath to preserve all the auncient former Customes of the Country inviolable, and to deliver up the succession peaceably to his Tanist, and then hath a wand delivered unto him by some whose proper office that is, after which, descending from the stone, he turneth himself round thrice forwards and thrice backwards." The Tanist "setteth but one foot upon the stone, and receiveth the like oath that the Captaine did." *A View of the State of Ireland*, pp. 6-7.

* In 1697, a writer observes: "We cannot wonder at this" [Hibernicising of the English] "when we consider how many there are of the children of Oliver's soldiers in Ireland, who cannot speak one word of English, and (which is strange) the same may be said of the children of King William's soldiers who came but t'other day into the country." *Cromwellian Settlement*: p. 130. A True Way to render Ireland Happy, 1697. Still later, in 1709, Mr. Molyneux the antiquary, in his "Journey to Connaught," wrote: "Here, I hear, live multitudes of Irish after their old fashions. The sheriff of this county scarce dare appear on the west-side of Galway Bridge, which may well be called the end of the English Pale." The English and Protestant English there were now mere Irish in manners, language, and religion. "The King's Writ does run," said one, "*lex currit*, but it runs away." *Irish Archaeological Society's Tracts*: Statute of Kilkenny, p. 7, notes.

of rights from the successful Revolutionists. By the Articles agreed upon before Limerick,* on the 3rd of October, 1691, it was guaranteed: that the Catholics should enjoy such religious privileges as they enjoyed in the reign of Charles II., and their Majesties promised to endeavour to secure them from disturbance: that all officers or soldiers who should submit to their Majesties Obedience should with their heirs be restored possession, without suit or trouble, of all their estates of freehold inheritance, and all the right, title, and interest, privilege and immunities, which they held or had been entitled to in Charles II.'s reign, or any time since, and which were now in the hands of the king or any of his tenants. The estates were to be restored freed from all arrears of crown or quit rents, or other public charges, due since Michaelmas, 1688. The Irish indicated were to have and enjoy all their goods and chattels, personal as well as real, which were still in their own hands, or held in trust for them. They were secured the right of freely following their professions, trades, and callings, as in the days of James II. Irish noblemen and gentlemen, comprised in these Articles, were to have the right of wearing arms. It was specially agreed that the oath of allegiance to be taken should be that enacted in the first year of William and Mary.

Under the Articles of Limerick and Galway, about

* *Limerick: its History and Antiquities*, by Maurice Lenihan, p. 268. Dublin: 1866.

one-third of the forfeited lands were restored to the old proprietors. But when the nation might have again thought of settling to peace, the Articles were violated in deference to rapacity and intolerance. An Ascendancy of Adventurers took the place of a Government, and every grade of them, from the scavenger to the privy-councillor, claimed and enforced a monopoly of rights. Protestant coal-porters petitioned against the employment of Papist porters; Protestants in the artizan-guilds insisted that no Catholics should be allowed to remain in them, nor should any be admitted; Protestant corporators protested against the presence of Catholics in cities. A Test-Oath was manufactured. Magistrates annoyed, ill-treated, and frequently dispossessed them in the country, so that the emigration to the Continent, which began on the capitulation of Limerick, greatly increased. The Irish Brigade in France was strengthened by constant flights of the "Wild Geese," as the emigrating recruits were called. In 1695 the first cloud of the Penal Storm broke. Catholics were forbidden to be schoolmasters under a penalty of £20 and three months' imprisonment for each offence. Denied education at home, if any Irish Catholic went, or sent a child, abroad for it, or was instructed in his own religion, or taught by a Catholic teacher, his lands and goods were forfeited for life. He was deprived of his civil rights; he might be injured, but he could neither sue nor prosecute, nor receive a legacy or deed of gift. If

any Catholic possessed a horse worth more than five guineas, he was compelled to surrender it for that sum to any Protestant informer. To conceal or assist to conceal a valuable horse was punished by fine and imprisonment. All secular priests exercising ecclesiastical jurisdiction, and all the regular clergy should, under penalty of imprisonment and transportation, have fled their country by May, 1698. If any returned, they were to be hanged, drawn, and quartered. Those who concealed any priest were heavily fined, and, on the third "offence," their lands and goods were confiscated. Protestant heiresses, if they did not marry a known Protestant, were deprived of their inheritances, which went to the next Protestant of kin.

Whilst these laws gave birth to a waspish swarm of priest-hunters and premium-seekers, they were not always so enforced as to make life a torture for the majority of Catholics. It was reserved for the next reign to do this.

The intrusion of new masters tended always to fuse and weld together the natives with the strangers of a previous intrusion. This, with the constant Hibernicising of the new-comers, tended to the formation of an united nation from heterogeneous elements. The bulwark against it was the Pale of the latest Ascendancy. Similarly, there was a cohesive force of self-interest and self-preservation to draw together the tenantry, in order to resist encroachments from those whom the chance of war had placed above them, and

in whose hands much power was left. From what we have seen of all preceding plantations, it is evident that the alien landlord's despotic power over the native "enemies," allowed to labour for him with their necks in halters as it were, reacted with an evil influence on the alien tenantry planted and privileged. They were defrauded, ousted, or rack-rented. The taste for exactions, nourished at the expense of the outlawed, or merely tolerated and oppressed "Irish" or "Papists," grew with what it fed upon, and was speedily exercised against English and Scottish tenants or Protestants. As the country calmed down after wars, the need of having them "as defensible men" for the isolated landlord decreased, and it became safe to rack-rent them; accordingly, exactions were imposed on them, continuing as long as their patience, and increasing till their forbearance ended.

Until William's reign, these oppressions were illicit and even forbidden by law, if connived at in practice. It was reserved for the parliament of this reign, at the request of the lord-tenant class, now powerful while the king was dependent, to authorize unlimited exactions, and to deal a legislative blow at the rights of the tenantry,* more severe than conqueror's sword had

* The Protestant tenantry, chiefly in Ulster, had to suffer much from a renewal of the old "cesse of souldiers," in the exactions and license of William's army. A contemporary, after showing how they were regarded as proper for plunder, says: "If to these you add the pressing of horses at pleasure, quartering at pleasure, robbing and plundering at pleasure, denying the people bread or seed of their own

dealt. The victims designated were prominently, but not exclusively, the Protestant tenantry—descendants of the colonists of the Plantations and Settlement, or the representatives of their claims. There existed, as has been shown, an immense number of tenants whose tenures had been created by livery of seisin and parole only, who had never been given any writing by their planter-landlords, although these, by not so doing, broke their own title. They evaded their obligations, expecting that the value of their property would increase with time,* and wishing to keep their hands free. Yet, as livery of seisin should be given, and promises became parole tenures, and all were valid and were steadfastly maintained by the so-estimated tenants, it became necessary to obtain a formal act of abolition. As the alien landlords introduced in our time through the Encumbered Estates' Court ignored the ancient customs, so did the new landlords of William, and the more selfish of the old, feel provoked at allegations of ancient customs and tenures which stood between them and an increase of gain.

corn, though the General, by his public proclamation, requires both, whereby multitudes of families are already reduced to want of bread, and left only to beg, or steal, or starve. These being the practices, and these the principles, and both as well known to you as to me, can it be wondered that the oppressed Protestants here should report us worse than the Irish?" [army]. *An Impartial History of Ireland*, by Dennis Taaffe, 1810. Extract of a letter from Dr. Gorge, Secretary to General Schomberg, in Ireland, to Colonel James Hamilton, in London, vol. III., p. 496.

* *Ulster Journal of Archaeology*, Family MSS.

Under the misleading pretext of "preventing fraud and perjury," they obtained in 1695 a remarkable de-grading Act, which precipitated immense numbers of firmly estated tenants into the dependent and serf-like conditon of tenants-at-will. By this Statute, (7, Gul. III., sess. I, c. 12,) it was enacted that "from and after the feast day of Saint John the Baptist, which shall be in the year of our Lord 1696, all leases, estates, interests, freeholds, or terms of years, or any uncertain interest of, into, or out of any messuages, manors, lands, tenements, or hereditaments, made and created by livery of seisen only, or by parole, and not put in writing and signed by the parties so making and creating the same, or their agents thereunto authorized by writing, shall have the force and effect of leases and estates *at will only*."* It was provided

* The pretext for plunder thus legalized had been advanced of old, but though it may have been practically condoned by rulers in Ireland, it was formally reprobated by King James I. His Commission for making Shires &c., (A. D. 1605) is prefaced thus: "Whereas His Majestie was informed that during the late warres in Irelande, divers persons being or pretending to be lordes of severall countries, territories, landes, etc., within Ulster and other partes of the kingdom, usurped the entire possession of the same, and wrongfullie expulsed divers auncient tenants and freeholders, etc., imposing upon said landes many unlawful cuttinges and exactions *under pretence that the tenants or freeholders are but tenants-at-will, albeit they and their ancestors have enjoyed the same* by course of discent for many hundred yeares past, which unjust usurpation the said pretended lords have continued sithence the warres." . . . So that there were many parts "wherein there are noe freeholders other than the said patentees and their heires." Public justice could not be done for want of a competent number of freeholders to serve in juries, &c. *A Repertory of Inrolments in Patent Roll of Chancery in Ireland*, p. 182.

that neither in law nor equity should they be deemed to be of greater force, "any consideration for making such parole leases or estates, or any former law or usage to the contrary notwithstanding." It is not to be imagined that those who sought for and obtained this law would avoid its advantages by granting writings, unless at exorbitant advances. At a time when internal communications were scanty, there were multitudes of tenants scattered throughout the country, intent only on improving the lands their fathers left them, who knew nothing of this de-grading Act, until its enforcement against them was attempted, and their title questioned for the first time.* The Statute of Frauds, (Stat. 29, Car. II., c. 3), of which this was an extension, had not in England an effect comparable to the effect of this in the unsettled state of Ireland, where the tenant was left utterly at the mercy of his new and hostile landlord. For instance, the clause

* By which, doubtless, a multitude of freeholders, held north and south, and, before this, validly. Thus a relic of such tenure may be detected in the mode of surrender of his farm made by Joe M'Key, a Presbyterian of Armagh, "most obstinate and rebellious" of tenants, who had "planted every stick and raised every stone" on the land, and who died of grief after the surrender. He thus "gave up possession:"—"He rose . . . and walking up to the other men in the kitchen, he said, 'Begone out of that till I give up the place. . . . Begone, I say!' and he pushed them out of the room. The young woman then came to him—'What is this, Joe?' she asked. 'You must go,' said he kindly; 'don't talk—leave the house.' She went at once. He put out the fire by kicking it about the floor, took 'rod and twig' from the garden, and handed me legal possession of the house and grounds."—Trench's *Realities of Irish Life*. Now this was not the surrender of one

with reference to the written authorization of the agent rendered even documentary evidence insecure. For what Irish tenant would think of questioning the written credentials of an agent who was at once the landlord's representative and the tenant's judge?

There were, however, two noteworthy exceptions to this abrogation of parole tenures. One exception was made for "all leases not exceeding the term of three years, whereupon the rent reserved to the landlord, during each term, shall amount to *two-thirds* at the least of the thing demised." Thus, in spite of the pretext, it was not to parole tenures that the objection lay, but only to such parole tenures as were shields against extortion. The penalty had produced written leases in England, but it only legalized gross general exactions in Ireland. The next exception appears to have been inserted, or rather retained, in

who has the mere chattel interest : it, was the delivery of the feudal possession or seisin handed down from sire to son, according to the old maxim, *Seisina facit stipitem*. The freehold was in him, not in the landlord, as with a tenant-at-will. No one else could be seised until he delivered up seisin. All who had any estate or possession in house or land had to join in or be absent at its delivery ; and hence, following a custom, M'Key put the men and girl out. "By delivery of the ring or haspe of the doore, or by a branch or twigge of a tree, or by a turfe of land."—Co. Litt. 271, b.n. (1). and 48 a. And with such words as "the feoffor being at the house door or within the house, 'Here I deliver you seisin and possession of this house, in the name of seisin and possession of all the lands and tenements contained in this deed.'" There is no mention of M'Key having a deed : his sires may have been among those who had got "livery in deed," or "livery in law," but who could not show Pynnar "any writing."

deference to the English common form. It was provided that "no estates, leases, or interests, either of freehold or term of years, on any uncertain interest *not being copyhold or customary interest*," should be assigned, granted, or surrendered unless by deed or note in writing. —

This was a highly important clause, for by it was once more officially recognized the great Custom of the Country, at present known as the "Ulster Custom." Those of the parole freeholders or leaseholders who became de-graded, fell naturally and necessarily into the greatest and widest class—the settled substratum of society—which held by custom, and whose parole "*copyhold or customary interest*" was acknowledged and confirmed. Their marks of higher tenure, as evidenced in their alienation forms, added another to the varieties of copyhold customs, whilst the tradition of their rights strengthened the resolution of this terre-tenant class.

It is not strange that, immediately after this degrading act, another (7 Gul. III., sess. 1, c. 21) should have to follow, dealing with manifestations of agrarian discontent, "Burning of houses or haggards of corn, killing or mayming of cattell, robberies, and burglaries." These deeds were done by "Robbers, Rapparees, or Tories," the historical henchmen of the tenantry. And as now the Protestant tenantry had severely suffered along with the Catholic, we find "Protestants and reputed Protestants" specifically mentioned among

the marauders as well as "Papists." Doubtless it was known that they had the sympathies of the English and Scottish tenants, for full satisfaction was required from the Protestant inhabitants of every barony or county where the deeds were done by Protestants and reputed Protestants. The Catholic inhabitants had to make satisfaction in case of Papist marauders. Apparently both Protestants and Papists at times combined their irregular agrarian forces, for it was provided that when such a thing occurred, both Protestant and Catholic inhabitants should make equal or proportionate satisfaction.

A TENANT-RIGHT Statute followed for Protestant ecclesiastics. Although its provisions are most important, seeing that they included Compensation for Improvements and a Retrospective Clause (things latterly much denounced), they were not novelties in principle. The statute was made rather to regulate existing customs so as to suit the needs of a peculiarly situated class, than to enact new rights. Under this law (10 Gul. III., sess. 3, c. 6) which was made "to encourage the building of houses and making other improvements on church lands, and to prevent dilapidations," it was enacted in 1704, that every ecclesiastical dignitary who "heretofore, since the year 1690," repaired or improved, or who "shall hereafter make, build, erect, add to, or repair any house, out-house, garden, orchard, or any other necessary Improvement on his demesne, glebe or mensal land—or in any other lands

in his possession—belonging to his See or Church,” [duly certified] “to be fit and convenient for the residence and habitation of him and his successors shall have from his next immediate successor . . . Two Thirds of the sum really expended.” Necessary annual costs were excluded. “And such successor, having paid Two Thirds of the sum or sums certified, shall receive one Moyety thereof, that is, One Third of first disbursement, from his next successor.” The confirmation by this act of the ancient custom of Compensation for Improvement is not so remarkable as the violent opposition given in latter days, to what was only an extension of its principle in a manner suited to general requirements. At the time it was enacted, the lay tenantry could, according to custom, sell their holdings, and thus recouping themselves for improvements, needed no statute to modify the common law. ✓

Were it not for this consideration yielded to the clergy, and those concessions to the bigotry of place-seekers and to the rapacity of landlords, it would seem strange why the memory of King William’s reign should be so exceptionally preserved by Irish Protestants. The upper classes obtained much and exulted: the lower classes suffered grievously, but have been misled by the clamour of those who gained. Otherwise they could hardly have so admiringly remembered a king who came as ally of the Pope, and during whose reign two fatal blows were dealt against the well-being of the Protestant productive classes. ✓

By one, the parole rights of the Protestant cultivators, with the exceptions stated, were destroyed : by the other, the prohibition of the free export of manufactured woollens, twenty thousand Protestant operatives were expelled the country. And both acts redounded, though indirectly, to the advantage of the oppressed Catholic natives : for the latter saved them from being rejected for sheep, and by the former the landlord was enabled to substitute many of them, as rent-paying serfs, for a Protestant yeomanry accustomed to comfort and privileges.

CHAPTER VIII.

PAROXYSM OF THE DE-GRADING POLICY.—DIVIDING THE SPOILS.—
VALUATION OF RENTS.—LABOURERS' LEASES.—SIR THEOBALD
BUTLER'S PLEA AGAINST ANTI-POPERY BILL.—ENACTMENT OF
THE PENAL CODE : ITS PROVISIONS AND THEIR EFFECT.—HOW
THE IRISH CATHOLICS RETRIEVED THEIR POSITION.—COLLU-
SION OF FRIENDLY PROTESTANTS.—REFLEX ACTION OF PENAL
CODE ON PROTESTANTS : UPROOTAL OF THE PROTESTANT
YEOMANRY BY CO-OPERATE "KNOTS" AND LARGE GRAZIER'S.—
EFFECT OF THE OCTENNIAL BILL.—RE-GRADING OR "CATHOLIC
RELIEF" ACTS.—RECOVERY OF THE ELECTIVE FRANCHISE.

WITH the accession of Anne, came a paroxysm of the de-grading policy. There being no war to furnish an excuse for confiscations, the nation was delivered up without pretext to its domestic foes, the authorities of the colonial pale, who despoiled it remorselessly. Feeling their position to be insecure, they resolved to make the most of their opportunity. The Crown no longer interfered to protect the cultivators. Its humiliation had been accomplished when William was compelled by the party of the Revolution, whose General rather than whose King he became, to violate the Articles of Limerick, and to treat those as enemies whom he had welcomed as subjects. In Ireland the new lord-tenants, whether called commoners or peers, v

were allowed to become arbitrary despots over the Irish, as compensation for remaining the political serfs of their fellows in England. So soon as they began to show an uneasiness in their serfdom, so soon did their masters commence to limit their despotism. The policy of playing off the villeins against the recalcitrant mesne-lords, under different names and circumstances, was then resumed.

As taskmasters, the first care of these lords was to make the most of the spoils already won ; their second to load with legislative chains those whom they had pledged themselves by solemn treaty to respect as freemen. The former object was accomplished in the first year of Anne, by an " Act for the Relief of the Protestant Purchasers of the Forfeited Estates in Ireland." They were formally allowed to " hold and enjoy " on payment of thirteen years' purchase for estates in fee simple, of six and a half years' purchase for estates for life, and so in proportion according to rents. But these terms were made yet easier by a clause enabling the Trustees, or any seven of them, to permit deductions, and " an allowance or abatement of so much out of the said purchase money, as shall by the judgment of the said Trustees, or any seven or more of them, according to a reasonable valuation, be made for estates or interests by them allowed."

The practice of valuation, as a means of determining the rent, was thus recognized.

From participation in these purchases they excluded

“Papists” — such was now the term for the Irish and old English inhabitants. It was to be an exclusively Protestant Plantation. Papists were “made incapable to Inherit, or take by Descent, Devise, &c., any of the Lands, Tenements, Hereditaments, or Premises aforesaid, or any Rent or Profit issuing out of the same.” Any purchase of them made for a Papist was void ; no lease made to a Protestant should be assigned to a Papist under pain of a fine of three rents. Informers were encouraged by a promise of one-half the fine.

But there was money to be made of the natives. They were again tolerated and oppressed : leases for any term not exceeding one year were permitted. They were tolerated and de-graded : leases of cabins or cottages under the yearly value of thirty shillings were allowed, but it was anxiously enacted that if any day-labourer should be let more than one cottage, or more than two acres, the lease would be void, and a fine of three rents imposed. Evidently the legislators had learned a lesson from experience when they made this provision, but their imposition of a fine to frustrate the landlord’s greed which would have tolerated Papist tenants only served to increase it, not to exclude them. He insured himself against possible risk by heavier exactions.


The “Act for the Relief of Protestant Purchasers” was followed the year after by a bill “to Prevent the Further Growth of Popery.” Its effect upon tenure of property was so important, that it demands a detailed

examination. Its principles have profoundly affected the later form of society ; and, for a century, liberal legislation has meant nothing more than the demolition of its superstructure, and the obliteration of its lines of demarcation.

The Catholic Lords and Commons, comprised in the Articles of Limerick and Galway, petitioned and were allowed to be heard by counsel against the Bill. On the 22nd February, 1703, Sir Theobald Butler, Counsellor Malone, and Sir Stephen Rice appeared at the Bar of the House of Commons. They pleaded the terms of the solemn treaty, signed by the General, perfected by the Lord Justices, ratified by their Majesties, and confirmed by an act of that local parliament.* They showed the advantages the government had gained by it, the peace it had given the country ; and they referred to the penal acts already passed as surely sufficient to satisfy the most exacting. They appealed to the public faith which even barbarous heathens held sacred, and which God had vindicated in the case of the Gibeonites, by the avenging scourge of famine and the destruction of Saul's whole family. They demonstrated that this act would be an infamous oppression, in flagrant violation of pledged honour and plighted truth, and they implored the legislators to abandon a bill which would compass tyranny by perjury. Their judges were their enemies. They pleaded in vain. An extract from Sir Theobald

* 9 Gul. III., ses. 4, c. 27.

Butler's speech gives, in a description of the intent of the Bill, a picture of the desolation it produced. "By the third clause," he said, "I, that am the Popish father, without committing any crime against the State or the laws of the land (by which alone I sought to be governed), or any other fault, but merely for being of the religion of my forefathers, (which, till of late years, was the ancient religion of these kingdoms), contrary to the express words of the second article of Limerick, and the publick faith plighted as aforesaid, am deprived of my inheritance, freehold, and of all other advantages which, by those articles and the laws of the land, I am entitled to enjoy equally with every other of my fellow subjects. And though such my estate be even the purchase of my own hard labour and industry, yet I shall not, (though my occasions be never so pressing) have liberty, after my eldest son or other heir becomes a Protestant, to sell, mortgage, or otherwise dispose of, or charge it for payment of my debts; or have leave, out of my own estate, to order portions for my other children; or leave a legacy, though never so small, to my poor father or mother or other poor relations; but, during my own life, my estate shall be given to my son or other heir, being a Protestant, though never so undutiful, profligate, extravagant, or otherwise undeserving. And I that am the purchasing father shall become tenant for life only to my own purchase, inheritance, and freehold, which I purchased with my own money; and



such, my son or other heir, by this act shall be at liberty to sell or otherwise at pleasure to dispose of my estate, the sweat of my brows, before my face. . . . Is not this, gentlemen, a hard case? I beseech you, gentlemen, to consider whether you would not think it so, if the scale was changed and the case your own, as it is like to be ours, if this bill pass into a law. It is natural for the father to love the child, but we all know that children are but too apt to slight and neglect their duty to their parents, and surely such an Act as this will not be an instrument of restraint, but rather encourage them more to it. It is but too common with the son who has a prospect of an estate, when once he arrives at the age of one and twenty, to think the old father too long in the way between him and it; and how much more will he be subject to it when by this Act he shall have liberty, before he comes to that age, to force my estate from me, without asking my leave or being liable to account with me for it, or out of his share thereof, to a moiety of the debts, portions, or other incumbrances with which the estate might have been charged before the passing of this Act. Is not this against the laws of God and man?—against the rules of reason and justice, by which all men ought to be governed? Is not this the only way in the world to make children become undutiful, and to bring the grey head of the parent to the grave with grief and tears? It would be hard from any man, but from a son, a child, the fruit

of my body, whom I have nurst in my bosom and tendered more dearly than my own life, to become my plunderer, to rob me of my estate, and to take away my bread, is more grievous than from any other, and enough to make the most flinty of hearts to bleed to think on it."

The law, as passed and completed, was a complex machinery of torture to disintegrate the upper classes, and to thrust them down into the slough of despond with the racked under-tenantry. The father was deprived of the guardianship or tuition of his children ; if any of them, to gain the estate, pretended to be a Protestant, he was made a Protestant ward in Chancery. If a legacy were left to children during their minority, the father had to abandon its charge to a hostile stranger, who might dilapidate it. No Protestant, having real or personal estate, could intermarry with a Catholic in Ireland : if they married in countries where it was legal, their marriage became void on their landing in Ireland. No Catholic could hold land on lease for a longer term than thirty-one years, nor have that at a rent less than two-thirds of the improved yearly value. He could only retain " the third penny profit," as it was called—for every penny so retained, he had to give up two pence as rent. The Catholic could not inherit, nor receive by gift nor purchase, any lands from Protestant holders. The Catholic children and relatives of Protestants were disinherited, and the estate went to the next Protes-

tant of kin. If a Catholic owner died, and a Protestant were not found, his estate was not to pass to his eldest son as was usual, but to be divided equally among all his sons, or (if none) among his daughters, or (if none) among the kindred of his father or mother.

This enactment of gavel-kind was made in order to crumble away the estates of all the great Catholic families; so that, being degraded, they might be no more heard of. Under the Irish system, care had been taken that due provision of mensal land and tribute should always remain to keep up the chieftain's dignity. It is strange to find a Celtic custom perverted to the persecution of Celts. There was also another custom in like manner perverted. Two-thirds profit-rent had been of old exacted from a tenant called a "Fuidir Greine,"* now a "Sky-farmer," a wandering yearly tenant, who, adding little to the soil and taking much from it, had had to pay in consequence an extraordinarily heavy rent. The extension of such a rule to all productive cultivators degraded them to the lowest level of the Irish scale for exhaustive tenants. Both the clauses, however, indicate that the customs of the Irish had survived all revolutions, and the fact of a thirty-one years' lease being given, proves that their claim to a certain security was still so strong and so general as to require recognition.

* Prof. W. K. Sullivan's *Introduction to O'Curry's Lectures* (Second Series).

Informers or "discoverers" were encouraged to watch that Catholics retained no more than one-third of the profit of their labours, for, on finding out such a thing, the Catholic was ousted, and the Protestant discoverer made master of his possessions. Catholics, finally, were disabled from receiving annuities—from voting at elections—from serving on grand juries—from abiding in Limerick or Galway—from having more than two apprentices, except in the linen trade. Under a penalty of twenty pounds or a year's imprisonment, they were required to inform as to where mass was said, the persons present, the residence of a priest (not registered), or of a schoolmaster. There was a reward of ten pounds laid on the head of a schoolmaster, twenty pounds on a regular or non-registered secular priest, fifty pounds on a Popish archbishop, bishop, vicar-general, or any such dignitary. There were thirty pounds a year granted for the priest who should become a Protestant. Advowsons were confiscated to the Crown. This act was unexpectedly made to smite down Dissenters, by a clause disabling them from executing any public trust, unless, contrary to their consciences, they should conform to the rites of the Established Church by a sacramental test. Thus a bond of sympathy became woven between the oppressed Catholic and the dissenting tenantry, on account of which each assisted the other to regain their rights.

On the 4th of March, 1704, the bill received the

royal assent. Its vigorous enforcement was ordered by the Commons, who, on St. Patrick's day, resolved that all magistrates or others who neglected or omitted its rigid execution were traitors. In 1705 it was decreed that the saying or hearing of mass by persons who had not taken (and could not take) the Oath of Abjuration, tended to advance the Pretender's interest; such judges and magistrates as did not make inquisition into these wicked practices were denounced as enemies to the king. The prosecution and informing against Catholics were declared an honourable service to government. In 1709, the power of the act was increased and extended. A new Protestant plantation was begun, by the importation of 811 German emigrants called "Palatines."* In 1723, additional precautions were taken that none but virulently anti-Popish magistrates should be appointed. Finally, in 1734, enforcement was ordered again of that code which Edmund Burke characterized as "a complete system, full of coherence and consistency; well digested and well composed in all its parts. It was a machine of wise and elaborate contrivance; and as well fitted for the oppression, impoverishment, and degradation of a people, and the debasement in

* The attempts made for the formation of foreign Protestant plantations were foiled by the same motives that caused the "thrusting out" of English tenants. One Munster Nabob swore he would have none of them for tenants, "because every one of them German Protestants would consider his-self as good a man as I,"—*Taaffe's History*, Dublin, 1811, vol. iv. p. 110.

them of human nature itself, as ever proceeded from the perverted ingenuity of man."

This being its character, it is of peculiar interest to discover how the Irish Catholics contrived to survive the enactments of a cunning so shrewd, unscrupulous, and depraved. The Statute of Kilkenny* they had confronted by open force with considerable success : but to this code, which imitated its policy of repul-

* This Statute (which was frequently renewed like the later Penal Code) had been confirmed by another Established Church, that of the Anglo-Normans. It forbade alliance by marriage, gossiping, fostering, or in any other manner between English Catholics and Irish Catholics. It banned English settlers who fraternized with the Irish, and did not use English customs, fashions, mode of riding and apparel. It condemned as criminal such English or Irish living amid them as used the Irish language among themselves. It ordered that Irish Catholic clergymen should be expelled from cathedral and collegiate churches among English Catholics, and none admitted—and that Irish monks and nuns should be driven out of any religious houses established (perhaps by themselves) on lands included in the Pale. The penalties ranged from forfeiture of goods to the punishment of High Treason. In addition, the Anglo-Norman Establishment Prelates in Parliament, at the request of the Duke of Clarence and Council, fulminated sentence of excommunication against all transgressors. So that those who wore the Irish mustaches, those who did not eject or reject Irish priests and nuns, those who, being Irish, prayed together to God in their native language, were not only criminals but excommunicates. A comparison of the first and last Penal Codes should soften sectarian recriminations. Neither does history encourage race-bigotry. If an Anglo-Protestant Pale was preceded by an Anglo-Catholic Pale, the Anglo-Norman Pale had for its predecessor a Milesian Pale. The establishment of a privileged Ascendancy was always the policy of invaders, and, whilst its gradual obliteration was correlative with the progress of fusion, the retention of any remnant shows that true representative government has not yet displaced the Rule of Conquest.

sion while far exceeding it in completeness of iniquity, they could oppose no such means. Nevertheless, though crushed, they were unconquered. Contact with the earth seems to have always given the natives new strength. They proved themselves a Titanic race. Their answer to the Statute of Kilkenny was to rise and drive its advocates back into a corner by the sea; their reply to the partizans of the Penal Laws was to stoop and patiently uproot the planted Protestant yeomanry whose places they occupied. This was accomplished not by a settled design but through the force of circumstances. Their action was diverse in different districts and for different classes, whilst the work of uprootal was carried out by two apparently contradictory processes.

There were many Protestants, as of old there had been many Anglo-Norman Catholics, who, having lived in close communion with the Irish, liked them. Not a few had received services from them, in the form of protection for life, freedom, and property in days bye-gone, and especially when the Jacobite cause was in the ascendant. Some were Jacobite at heart, though, not being Catholic in religion, they escaped the penalty of their politics. Others were averse to persecution, from feelings of good neighbourhood, humanity, or indifference. And all whose residences were scattered throughout the rural parts, except in a few districts, were well aware that collusion would bring them security and wealth, whilst active enmity

would be encountered by the hostility of bands of desperate men, who retained, in spite of all acts, the arms which they bore from the towns they had evacuated with all the honours of war. For certain of these reasons, Protestants not unfrequently purchased and held the estates of Catholic landlords for them, in secret trust.

Immediately after the war, many of the Protestant lord-tenants had divided their immense estates into farms of from fifty to one hundred and fifty acres, and leased them to new settlers. In cases where a Protestant plantation existed, the tenants were allowed to remain either undisturbed, if they had leases, or at an increase of rent when their parole rights were disregarded. The Irish terre-tenants had been ground down in different districts into the condition of labourers holding not above two acres, of yearly tenants, of tenants for thirty-one years, abandoning two-thirds of their profits as rent. The labourers managed to regain their position by forming among themselves little co-operative societies or "knots," as they have been called. In doing this they acted upon an ancient Irish custom. When a "Knot" was formed, the members put forward one as their representative, who bade against the Protestant occupant when his lease lapsed, for the farm. Being inured to hardships, they were willing and able to offer a higher rent, and the performance of more onerous "duties" than the Protestant. The latter was, indeed, unburthened by

contributions which pressed on Catholics, from whom were wrung the prizes for the persecution of their priests and schoolmasters, their religion, and their education. But the Protestant laws, which stripped the Catholic tenant of his rights, made him victorious in the struggle for life with the Protestant tenant, accustomed to comfort and privilege.

In a competition of sacrifice the man who had nothing to lose overcame the man who would fain lose nothing. The Protestant landlords, who had helped to forge the penal laws, helped as readily to sacrifice Protestantism to its Juggernaut. Papist money was as good in quality and greater in quantity than Protestant. *Non olet*. It reeked not of Popery.

Again happened that which followed upon every Plantation, which Pynnar reported against, and which Spenser and Paine described.* A writer of the eighteenth century records that "some of the Protestant population returned to England whence their forefathers originally came—some of them emigrated to America; and that Protestant emigration has continued in an unceasing stream, whilst another body of them lapsed into poverty, and then into ignorance, and then into the religion of the Papists."†

* "Great men which had grants made to them at first, it was in regarde they should keepe forthe Irish — instead of keeping out the Irish, they doe not only make the Irish their tenants in townlands and thrust out the English, but some of them become meere Irishes."—*A View of the State of Ireland*, p. 105.

† *Speech of the Rev. Mr. Seymour, respecting the conduct of the aris-*

When the co-operative "knot" had obtained the land, the representatives or "land-jobbers" divided it among the members. Elsewhere a successful yearly tenant dealt with the landlord singly, aided frequently by sums of borrowed money. But, perhaps, the severest blow was dealt back-handed by the penal laws against the Protestant tenantry, through those Catholic tenants they had so anxiously fettered by a short lease, and impoverished by the exaction of two-thirds of the fruit of their labours as rent. "No sooner," writes Lord Taaffe,* "were the Catholics excluded from durable and profitable tenures, than they commenced graziers, and laid aside agriculture; they ceased from draining or enclosing their farms, and building good houses, as occupations unsuited to the new post assigned them in the national economy. They fell to wasting the lands they were virtually forbid to cultivate—the business of pasturage being compatible with such conduct. This business, moreover, brings quick returns in money, and though its profits be smaller than those arising from agriculture, yet they are more immediate, and much better adapted to the condition of men who are confined to a fugitive property, which can so readily be transferred from one

tocracy of Ireland towards their Protestant tenantry, and the consequent emigration of Protestant Yeomen, delivered at Sligo (with quotations from former authors), note, 20th August, 1828.

* *Observations on Affairs in Ireland from the Settlement in 1691 to the present time, by Nicholas Lord Viscount Taaffe.* London (reprint), 1766.

country to another. This pastoral occupation eludes the vigilance of our present run of informers, as the difficulty of ascertaining a grazier's profits is considerable, and the proofs of his enjoying more than a third penny profit cannot so easily be made clear in our courts of law. The keeping the lands waste, also, prevents in a great degree leases in reversion, what Protestants only are qualified to take, and what (by the small temptations to such reversions) gives the present occupant the best title to a future renewal." The effect of this enforced method of self-defence was most disastrous to the Protestant tenantry. It resulted, in many counties, in "expelling that most useful body of people called yeomanry in England, and which we denominated sculoags* in Ireland — communities of industrious housekeepers who, in my own time, herded together in large villages, cultivated the lands everywhere, till, as leases expired, some rich grazier, negotiating privately with a sum of ready money, took their lands over their heads. This is a fact well known. The Sculoag race—that great nursery of labourers and manufacturers — has been broken and dispersed in every quarter, and we have nothing in lieu but those most miserable wretches on earth—the cottagers; naked slaves, who labour without food, and live while they can without houses or covering, or under the lash of merciless and relentless masters." Emigration and

* Properly "*Scológ*," a petty farmer.

occasional famines thinned the Protestant yeomanry and scourged the towns. The violation of the Treaty of Limerick was being avenged on the lower grades of the intolerant Ascendancy. The lords who had broken faith with the Catholics broke faith with their Protestant tenants, and "thrust them out" once more. ✓

In the plantation counties of Ulster, where the Catholics were driven to the hills, the Protestants mostly escaped the indirect action of the penal laws. Their landlords, living in a settled state, amongst a law-recognized population, were left without the temptations which fostered the greed of their fellows farther south. ✓ Oppression there was, but not usually extirpation. The landlords were not heartless strangers. Elsewhere it was different. In 1727, Dean Swift laments that one-third part of the rents was spent in England by the absentee chief landlords. The old seats of the nobility and gentry had gone to ruin, and no new ones were built. The families of farmers who paid great rents had to live on buttermilk and potatoes, their houses hovels, their dress wretched, their feet bare. Extravagant rack-rents were demanded, and the tenants should either yield them or go a begging. "The rise of our rents," he adds, "is squeezed out of the very blood and vitals and cloathes and dwellings of the tenants, who live worse than English beggars." * He compares the island to an

* *The Complete Works of Jonathan Swift, D.D.* The Miserable State of Ireland.

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hospital where the household officers grew rich, whilst the poor, for whose sake it was built, were almost starving for want of food and raiment.

The persecution of the Catholics slackened, and in 1757 the Duke of Bedford promised to abridge the penal laws. But the burthen of the cultivators was becoming intolerable; in Munster they had of old enjoyed a right of commonage, and "some landlords set their lands to cottiers far above their value; and, to lighten their burthens, allowed commonage to their tenants; afterwards, in despite of all equity, contrary to all compacts, the landlords enclosed these commons, and precluded their unhappy tenants from making their bargains tolerable."*

In 1762, the cultivators gathered and levelled the enclosures, and forming bands these received the name of "Levellers." Next, under the name of "White-boys," they long resisted the excessive exactions of rents and tithes. They carried on a sort of occasional

* *An Inquiry into the Causes of the Outrages committed by the Levellers or Whiteboys, 1762.* Exactly the same complaints about confiscations of commons are continued in works treating of the Western half of Ireland, during the last fifty years. Of a Donegal landlord it is written: "He took 10,000 acres of mountain land from the tenantry, which they and their fathers had used from time immemorial for grazing. He gave no compensation: nay, he raised the rents upon the patches which he left." *The Landlord in Donegal, by Denis Holland, Belfast, 1858.* Also *Lawrence Bloomfield in Ireland, a poem, by William Allingham, London.* *The Lansdowne Estates, by Thomas Crosbie: Cork, 1858.* *The West of Ireland, by Henry Coulter: Dublin, 1862.* *Irish Landlordism since the Revolution, by Rev. P. Lavelle, P.P.: Dublin, 1870.*

guerilla-warfare, assembling on horseback, and often riding a considerable distance to the scene of operations.

In 1768, the Octennial Bill, by causing members of parliament to take care that they should have a sufficient number of voters for their re-election, checked the uprise of the Catholics, who had no votes, and often caused them to be dispossessed, that Protestant electors might be planted. Against evictions, exactions, and intolerable oppressions the peasant productive class waged a long and fluctuating warfare, and, though with frightful suffering, maintained their ground. Misery made them desperate. They had been left nothing to lose but their lives, and another Paine might have heard them say : " As well die fighting as be harried to death."

" The gentlemen of Ireland," wrote, soon after, an English visitor, Arthur Young, " in legislating for Whiteboyism, overlooked the real cause of the disease," which lay in themselves and not in the wretches they doomed to the gallows: " Let them change their own conduct entirely, and the poor will not long riot." " The abominable distinction of religion," he adds, " united with the oppressive conduct of the little country gentlemen, or rather vermin of the kingdom, altogether still bear very heavy on the poor people, and subject them to situations more mortifying than we ever behold in England. The landlord of an Irish estate, inhabited by Roman Catholics, is a sort of

despot, who yields obedience, in whatever concerns the poor, to no law but that of his will." No cultivator dared disobey him ; horsewhipping, knocking down, were spoken of in a way to make an Englishman stare. There was no redress. The poor man dared not appeal to a law which branded him, and whose bigoted officials would have scoffed at him. If any magistrate had granted a summons against a "gentleman," he would have received a challenge to a duel. Even the life of the poor man had sometimes been taken with impunity.*

In 1763, the same year in which the "Levellers" rose in the south, the Ulster cultivators combined and revolted in the north. They wore oak-leaves in their hats, and from this custom they received the name of "Oak Boys," or "Hearts of Oak." Their combination rapidly spread over the counties of Armagh, Derry, and Fermanagh : first formed to resist oppressive road corvees, its aim became identical with those of the Whiteboys of Munster, namely, resistance to exactions, rack-rents, and oppressive tithes. Another

* *Tour in Ireland by Arthur Young*, vol. II., part II., pp. 50-51, 1776. Feudalism in its worse phase was then prevalent. "Landlords of consequence" boasted to him of exercising that wrong of *concupiscit* with the wives and daughters of cotters, which in France was one of the causes of the horrors of retaliation practised during the Revolution, seventeen years later. In the plantation districts this has been heard of since. M'Evoy, in his Statistical Survey, made for the Dublin Society a quarter of a century later, states that he found in some leases stipulations "too shameful to mention." This he says, after enumerating the villen dung-cart services exacted.

revolt succeeded, in consequence of the conduct of an absentee nobleman. The leases on his estate having expired, he required heavy fines instead of an increased rent from his middlemen and tenants. He set up their estates to the highest bidder. "The occupier of the ground, though willing to give the highest rent, was unable to pay the fines, and was therefore dispossessed by the wealthy undertaker," [the word had now a new meaning], "who, not content with moderate interest for his money, racked the tenants to a pitch beyond the reach of the old tenants."* Against such "undertakers" and "fore-stallers," both those cultivators who had been ousted and those who feared a like fate combined in an association called the "Hearts of Steel," in 1771. They maimed the cattle which occupied their homesteads. These Protestant insurgents became very formidable; and the public sympathised with them. After some years, however, they were repressed by force of arms. The infringement of their ancient rights and customs had rendered these plantation-tenantry profoundly discontented. "Many thousands of Protestants emigrated from these parts of Ulster to the American settlements, where they appeared in arms against the British government, and contributed

* *A Philosophical Survey of the South of Ireland, in a series of letters addressed to John Watkinson, M.D.* London, 1777, p. 311. The author observes that the causes of agrarian revolts were temporary in Ulster, but permanent in Munster.

powerfully by their zeal and valour to the separation of the American colonies from Great Britain.”*

In 1771 the same causes which had always operated to help the Irish cultivators to obtain security of tenure began again to produce their effect. An act was passed allowing Catholics to lease fifty acres of thoroughly unprofitable bog, together with a half acre of arable ground, at a mile's distance from any town. No tithes or cesses should fall on it for the first seven years, but if half the bog were not reclaimed in twenty-one years, eviction followed.

In 1777 an English writer,† describing the state of the country, wrote that “it was little wonder that insurrection should rear its head in this ill-fated country, the first landlords of which are absentees, the second either forestallers or graziers, and where the only tiller of the soil stands in a third, and sometimes in a fourth degree from the original proprietor.” The

* *Gordon's History of Ireland*, vol. II., p. 249.

† *A Philosophical Survey of the South of Ireland, in a series of letters addressed to John Watkinson, M.D.* London: 1777, pp. 293-313. The graziers, he observes, had a score of years before got rid of agistment, paid in lieu of tithe of grass; and a rich grazier, “paying perhaps £10,000 a year rent, may not be subject to as much tithe as a wretched cottier who holds but ten acres of land.” The case of Ireland resembled that of England in the reign of Edward VI., when the cultivators protested and were protected, but here “every man, connected with the interests of graziers or swayed by their prejudices, will tell you very dogmatically that tillage will never succeed in Ireland.” Neither the riots nor the oppressions were sectarian questions: the new race of Catholic graziers could oppress their Catholic tenants as well as oust the Protestants. “If the majority” [of insurgents] “in the north were Presbyterians, and in the south Papists, it is

curse of unscrupulous "middlemen" became evident. The wealth and influence of exterminating graziers were great. Yet, though Catholics grew rich and thus influential, able to satisfy their landlord's greed of gold, he saw, regretfully, that they added nothing to the permanent value of the estate. Often extravagant, his indigence, not his will, consented to concessions. He discovered, like his predecessors, that the Irish would neither build nor improve without security. Catholic tenants kept the lands waste for fear of informers, and the privileged Protestants, not having much rivalry to dread—on account of the influence given them by the Octennial Act—did not improve, and grew independent. To open the field to a competition by which estates should be made more valuable and rents increased, an act was passed in 1778, allowing Catholics to obtain leases for not more than 999 years, or for any number of years determinable on not more than five lives. This was a large concession, but a

because the body of the poor were of those persuasions in both places. And it should be attended to, that the oppression of the poor in the south proceeds very much from the Papists themselves, as the graziers who engross the farms are mostly Romanists." The cultivators everywhere, in consequence of oppression and neglect of their grievances, became "constant enemies of the State, the State not being their friend nor the State's law." Twenty-one years' lease, he remarks, was a good one in England, where the tenant was allowed to retain two-thirds of his profits—one-third being allotted as rent, another to support his family, the last for contingencies. In Ireland, however, the tenant should live on potatoes and buttermilk, and yield all other profitable produce as rent.

lease for years being only a chattel interest, did not confer a right to the suffrage.

These concessions, however, indicated not only that the intolerance of the last settlers was succumbing to self-interest, but that, as ever of old, the invaders were becoming naturalized, and the spirit of conquest subjugated by the force of friendship. Many kind offices, it could again be said, had interchangeably passed between the last comers and the old inhabitants, relations of good neighbourhood had been formed, and bonds of much dearness established. Irish statesmanship was equal to the occasion. "The question is not whether we shall show mercy to the Roman Catholics, but whether we shall mould the inhabitants of Ireland into a people." Thus spoke Grattan in the debate on a Bill for the further relief of Roman Catholics, 1782. By this Bill, which passed into law, the Catholics were enabled to purchase, or take by grant or otherwise, and to dispose of lands as freely as Protestants; but it prescribed an oath of allegiance. However, it struck off from the Statute Book many of the grosser clauses of the Penal Code. Catholics were allowed to possess horses worth more than five guineas each; to abide in the prohibited cities; to be private tutors or public schoolmasters; to escape exactions for losses caused by foreign privateers; to be guardians of their own children; to attend or celebrate mass. In 1792, they were admitted to the practice and profession of the law; intermarriage with

Protestants was permitted under certain restrictions ; they were allowed to establish educational seminaries and academies ; the limitation of the number of their apprentices was abrogated. But the petitions of the Catholic Committee and Belfast Dissenters for an extension of the franchise to them were rejected.

For a quarter of a century since the passing of the Octennial Bill, the Catholics had looked forward to general elections with dismay and horror, as "a visitation and heavy curse." These are the words used in the petition presented by their delegates to the king, on the 2nd January, 1793. Their reason was that "it continually happens, and of necessity, from the malignant nature of the law, must happen, that multitudes of the Catholic tenantry in divers counties of this kingdom are, at the expiration of their leases, expelled from their tenements and farms to make room for Protestant freeholders, who by their votes may contribute to the weight and importance of their landlords." It is to be noted, as marking the cordial friendship that had grown up amongst the inhabitants holding different religious creeds, that the delegates chose to pass through the north, and that their carriages were drawn through the streets of Belfast by a Presbyterian populace, amid the acclamations of all.*

* In some rural localities the bigoted inhabitants, however, constituted themselves an irregular executive for the enforcement of the Penal Laws repealed by Parliament. They attempted to disarm and extirpate Catholic husbandmen ; and a reminiscence of Cromwellian orders is observable in their threatening notices, which ran thus :—

In 1793, the right of the elective franchise was granted, together with that of being grand and petty jurors in all cases, of endowing a college and schools, of carrying arms (with a property qualification), of holding certain subordinate civil offices, and of being justices of the peace. The remnant of the penal code affecting personal property was repealed. An oath was imposed as a preliminary to the enjoyment of the rights granted. So great was the progress of enlightened liberality, that when this Relief Bill was under notice of the Irish Parliament, a member, Mr. Knox, proposed to add a clause enabling Catholics to sit in parliament. "The man," he observed, "who could say the Catholics ought to be contented with this bill knew little of the human heart, and felt nothing of its finest energies. Liberty must be enjoyed in whole, not in part: she must shine with a full orb, and her least obscuration is scarcely felt less than her total eclipse." If this clause, which was negatived by a majority of 96 to 69, had then passed, the evils which followed its success in 1829 might have been averted.

"To Hell or Connaght immediately, or we, Captain Rackall and Captain Firebrand, will come and destroy you, and send your souls to hell and damnation." (*Plowden's Post Union History*, vol. I., p. 24). The Catholic peasantry formed a society of "Defenders" (afterwards Ribbonmen) to resist these extirpating bands called Peep-of-Day Boys. The latter, after 1795, assumed the name of Orangemen. These are historically interesting, as being a fossil remnant of Penal Pale society, instinct with its intolerant spirit. There has been, however, a liberal schism in their ranks.

CHAPTER IX.

EFFECT OF INSECURITY ON LANDLORDS AND TENANTS.—A NEW EPOCH.—FROM 1793 TO 1829.—NO SYSTEMATIC EVICTIONS.—RE-GRADING.—SECURITY AND OPPRESSION.—LEASES GENERAL.—FREEHOLDS.—SOCIAL STATE OF THE COUNTRY.—UPPER-TENANTS, MIDDLE-TENANTS, UNDER-TENANTS, COTTERS.—THE FEUDAL SYSTEM ; FEUDAL MULCTS, AND FEUDAL SERVICE.—DUTY-WORK AND BOND-LABOUR.—POLITICAL RENDER : “ AN ARMY OF FREEHOLDERS.”—CELTIC CUSTOMS.—JOINT-TENANCIES.—RUNDALE.—GAVEL-KIND : “ A COMMON LAW OF INHERITANCE.”—OBSERVATIONS ON THE EXISTENCE OF SECURITY AND CONTINUITY OF TENURE, CERTAIN RENTS, AND SALE OF FARMS.

So long as a Stuart lived to intrigue for the throne of Britain, the chief tenants of the last invasion and their non-Jacobite predecessors felt they held their possessions by an insecure tenure. They dreaded that, should the Pretender succeed, the chief tenants who had been ejected for their fealty to his cause would be enabled to enforce their claims with more certainty than their predecessors at the restoration of Charles. For a precedent had been established, when the Irish Parliament insisted that James II. should consent to a Repeal of the Act of Settlement ; and the Irish now upon the Continent constituted a formidable body of auxiliaries who would not tolerate neglect.

Upon the conduct of the chief tenants or landlords this insecurity of tenure produced an effect identical with that observed in the case of the terre-tenants. The under-tenants, when insecure, seek from husbandry only immediate gains; they starve the soil, and impoverish it with exhaustive crops; they form combinations to deter those who might compete for it against them at the expiration of their term.

The upper-tenants in like case, acknowledging none of the duties, exercised all the rights of proprietorship; they scourged the cultivators with rack-rents and exactions; they entered into a parliamentary combination to depress those of their Jacobite compeers whom they could reach, to a state whence it was hoped they could never rise as rivals.

Confidence in the future being absent, neither good husbandry nor good landlordism could exist.

Unfortunately, it was under such circumstances that the character of a large portion of Irish landlordism was formed. On the decay of the Stuart interest, the Williamite chief-tenants passed from a state of insecurity to one of security, and as they feared no longer the Jacobite claimants, they gradually abrogated the Acts disabling Catholics from holding real estate. Because now they were certain that their estates would descend to their heirs, and for other reasons, they made such concessions as might limit waste, by permitting the under-tenants to enjoy some degree of security also. But the habit of oppression, of exacting high

rents, and of caring nothing for the welfare of the cultivators, appealed to motives of self-interest and self-indulgence too powerfully to be shaken off. It had become ingrained.

A relaxation of Catholic disabilities was not, therefore, synonymous with relief to the earth-tillers. During the score of years which preceded 1793, though it was signalized by a repeal of all the laws forbidding Catholics to enjoy real estates, the mass of the cultivators suffered not only from exactions, but from systematic evictions, because as Catholics they had no votes.

A new epoch commences with the grant of the elective franchise in 1793, to terminate with the grant of the representative franchise in 1829. It was characterized by an absence of systematic evictions; by conversion of pastures into tillage in the early part; by a multiplication of small holdings, but by no cessation of burthensome exactions and despotic oppressions.

The social state of the country might be compared to that which existed in England at the time of the enactment of the statute *Quia emptores* (18 Ed. I.)* The principal lord-tenants habitually farmed out their

* To possess an accurate idea of Ireland's condition, it must be remembered that William III. was a "William the Conqueror," amongst whose followers a large portion of the country was shared out. Over two centuries had elapsed from the Conquest in England, when the above statute was passed: only a century and a quarter had elapsed from the latest "conquest" in Ireland, in 1812.

vast tracts in large parcels to middle-tenants, a superior class of whom held by leases of lives renewable for ever,* or by leases for 999 years. Many, however, held by leases for short terms. They were not held to occupancy, and were, in fact, a species of bailiffs or agents, who contracted to guarantee their lord a certain revenue, on condition that his estate were par-

* With reference to this kind of tenure, a case (*Boyle v. Ly-saght*, 1787) elicited some remarks from Lord Chancellor Lifford, which are highly instructive, as showing the vitality of tenure-claims in Ireland, and the resuscitation of a custom even after its formal abolition. The Lord Chancellor said he could not tell how long this kind of tenure prevailed in the north ; in the south it existed since the Great Earl of Ormond's time. He had introduced it to people his estates with an improving tenantry, which it had naturally done. "It obtained till it had acquired these tenants great respect and very valuable properties, inasmuch as they were considered to have a perpetual interest." Tenants neglected to make renewals on fall of lives, and were guilty of great laches ; landlords brought ejectments, and tenants sought relief in the courts of equity, and these considered them entitled to relief on giving up adequate compensation. Notwithstanding express proviso in lease that if tenant neglected to renew, he should have no right to require the landlord to renew, the courts of equity adopted the rule. (*Murray v. Bateman*, in 1776.) Finding that such cases abounded, Lord Chancellor Lifford formed his opinion (notwithstanding what ideas he brought from England, where this kind of tenure was unknown), and he decreed a renewal : "I did consider that there was a local equity, as I have often heard it called, *the old equity of the kingdom*." On appeal to the Lords in England, the decree was reversed ; they were unacquainted with the "local equity." Some lords afterwards told him they had altered their opinion, as the decision, though right on English principles, was wrong, "taking into consideration the *usage in Ireland* and all the circumstances." Several cases were, however, decided in accordance with the English decision. But on the supreme

celled out for a fixed term under their management. Beneath was the vast productive class of terre-tenants, now generally freeholders, secured by leases or by recognized customs. The leases varied, being usually for twenty-one years, twenty-one years and lives, thirty-one years, thirty-one years and lives, sixty-one years and lives.* Those were the most common

jurisdiction being obtained by the Irish Parliament, the general alarm brought the matter before it, "and the old equity was revived by the Act 19 & 20, Geo. III., c. 30." With such a precedent, it seems strange that a judge should have decided against the Ulster custom's validity, but three things help to account for it: first, in above case the judge came from England, where customs were long respected; second, the tenants were the rich middle-tenants who were often called "landlords," and who helped largely to make laws; third, in the Ulster case, the judge was drawn from the ranks of Irish landlords imbued with their views, and the tenants were simply productive terre-tenants, for whom the non-productive upper-tenants then legislated.

* *An Account of Ireland, Statistical and Political, by Edward Wakefield*, vol. I., p. 285. London: 1812.

An idea of the kind of tenure prevalent over the country may be got from this abridgement of some of Wakefield's reports (pp. 246-263), which were partly original, partly compiled from the Statistical Surveys, valuable and interesting works made for the Dublin Society at the commencement of the present century.

Antrim: leases for twenty-one years and one life; determinable leases.

Carlow: twenty-seven years and one life, formerly thirty-one years and three lives. One landlord considered the latter "a bad method, as he finds that the tenants have all become independent."

Cavan: twenty-one years or one life; thirty-one years or three lives; perpetuity.

Clare: thirty-one years; three lives; perpetuity.

Cork: thirty-one years; three lives; perpetuity; partnerships frequent.

Donegal: twenty-one years and a life; thirty-one years and three

which, by including lives, gave the right of voting. And "as to divide and subdivide, for the purpose of making freeholds," was "the object of every land-owner,"* an immense number of the lowest kind of freehold tenures was established over the country. To have a freehold, a tenant at this time should be able to swear to an interest in it of at least forty shillings; those who so held were thence termed "forty-shilling freeholders." The terre-tenant, like the lord, set out portion of his land to cottagers for the sake of labour yielded in return; and this system, though it may have been abused by the tenant, was a safeguard for the labourer against destitution.

The grant of freeholds to the cultivators having been made for a mere political purpose, it is not to be

lives; sixty-one years, with or without three lives; partnerships common.

Down: twenty-one years and one life; formerly thirty-one years and two lives.

Dublin: leases vary much, but all include a life.

Fermanagh: thirty-one and three lives; latterly, twenty-one and one life.

Galway: thirty-one years, or three lives; partnerships common.

Kerry: thirty-one years and three lives; partnerships very frequent.

Kildare: now twenty-one years and one life; partnerships common.

King's County: twenty-one years (no "signs of a superior tenantry"); twenty-one years and a life.

Limerick: in general the leases run for thirty-one years and three lives. "Lord Courtenay's land is let only for years, but the farms, if I may use the term, are *colonizing*; and I am assured by graziers, that people pay more rent than bullocks, without the employment of capital, and therefore the occupiers of larger premises take in all the cottier-tenants they can collect."

* *An Account of Ireland, &c.*, vol. II., p. 301.

presumed that they were elevated to a proper position of material prosperity. Exactions of personal service, tribute in kind, and mulcts in money, added to great rents, made their condition resemble that of the "poore oppressed freeholders," found in the Pale of old. As the limits of the Pale had been extended to include all Ireland, Pale-practice was now found throughout the whole country.

To visitors from England (now as before) the position of the Irish tenantry seemed one of deplorable slavery.* They could compare it to nothing but the

* Paley said : "The lower class of the Irish are poor, and, in point of situation, in a state of slavery." *Meadly's Memoirs of the Life of Paley*, p. 379, Edin. 1810.

Wakefield quotes an account of Russian serfdom, from Storch, as an illustration of the state of things he saw in Ireland : "The value of an estate is determined partly by its situation ; but chiefly by the number of male peasants who belong to it. Where a piece of land is sold or let, the peasants form the principal object by which its value is calculated. . . . Some proprietors divide all their lands among their boors or peasants, and exact from them only a certain sum of money called *obrok* ; others, besides the *obrok*, retain in their own hands a portion of land which the peasants are obliged to till by bond-service ; a third class require no *obrok*, but divide among their boors as much land as is necessary for their support, and cause them to cultivate the remainder for them without any payment for their labour. . . . A great part of the nobility never reside upon their estates, and therefore take no concern in the management of them." The *obrok* was paid by a headman on the estate, which was managed by an agent. Wakefield observes, that in two cases the Russian serf is allowed a certain portion of land for the support of himself and his family, and in return he either pays the *obrok* along with personal service, or the latter only ; "and in this he seems to be exactly on a level with the Irish *slave*, who is bound by the terms of his lease to

condition of the serfs in Russia, or of the peasants in France before the Revolution of 1793. The same sufferings which had helped to cause that great change in France, had indeed impelled the Irish in 1798 to make a similar attempt, but not with a like success.

What those observers failed to perceive was that there existed in Ireland a superstratum of alien feudalism unconformably overlying a stratum of native rights, such as may have existed in England for a time subsequent to the Norman invasion, when the name of "Englishman" was as much a term of reproach as that of "Irishman" had been, and Irish "Papist" was until lately.

In both countries the cultivator's ancient rights were but slowly recognized. In Ireland, Wakefield was surprised to hear a magistrate refuse to administer justice, saying: "That man is no tenant of mine; let him go to his own landlord;"* but this was simply an example of feudal practice. It was, however, an abuse of feudalism which furnished him instances where "magistrates arrogate to themselves the power of deciding disputes among the common people in questions of litigated property, in divorces, and other

cultivate in like manner the land of his *master*. The expressions I have here used may offend some delicate ears; but to call the former *tenant* would be a perversion of terms, and to name the latter *landlord* would be a prostitution of language. Can such a system be suffered to remain any longer in a free country?"—*An Account of Ireland*, vol. I., p. 509-510.

* *An Account of Ireland, &c.*, vol. II., p. 805.

cases of similar nature.”* Interference with the tenant’s marriage, as described, was a tyrannical travesty of the feudal right of *maritagium*. Abuses of

* Similar protests are contained in recent works. Certain “rules of the estate” have been cited in evidence, showing how in several districts the marriage of tenants is subject to prohibition. The *Times’* Commissioner, 1869, gave an instance from a midland county. The most remarkable cases are contained in a series of reports by Mr. Thomas Crosbie, published in the *Cork Examiner* in 1858, entitled the *Lansdowne Estates*. The lord-tenant was an absentee; the agent, Mr. Stewart Trench, author of *Realities of Irish Life*. Mr. Crosbie observes that marriages could not take place without permission from the agent. To seek it, the tenant had sometimes to travel forty or fifty miles. “An old man, Peter Shea of Ardea, lived to the age of eighty-eight years as tenant on the estate. He was one of those persons whom philosophers would term benefactors of mankind, for he made many a blade of grass grow where none ever grew before. In his young days he entered upon a barren waste, built a house with two outhouses, subsoiled a great part of the land, erected a thousand perches of double fence, and made such other improvements as his skill enabled him on that patch of mountain. During his life-time he did well, but he lived too long; for, at the advanced age I have mentioned, he violated the regulations, by allowing his son to marry a widow possessed of some means. The obnoxious couple were satisfied to emigrate to America, and did in fact go, like the rest of the expatriated, at the expense of the estate. But the poor old man of eighty-eight, with his wife, eighty years of age, was ejected from his little holding.” It was a rule that “no stranger is to be lodged or harboured in any house upon the estate,” lest he might fall sick, or otherwise become chargeable. Tenants were fined heavily who gave lodgings to a daughter, a son, a brother-in-law. One tenant, too terrified to lodge her sister-in-law while her husband was seeking work, consented to build her a temporary shed, as she was in low fever and approaching her confinement. There the babe was born, but a fine of a gale of rent and demolition of the shed were exacted. “Thus driven out, and with every tenant on the estate afraid to afford her a refuge, the miserable woman went about two miles up the mountain, and sick as she was,

power, however, readily spring up, and endure long in a land governed by conquest-rule. The corrupt and oppressive conduct of the magistracy was a prominent cause of tumults and insurrections.* Wakefield could

and so situated, took shelter in a dry cavern, in which she lived for several days. But her presence even there was a crime, and a mulct of another gale of rent was levied." Within three weeks the tenant has thus to pay two "gales" of £3 2s. 6d. each; and another tenant, being partner with him on the mountain, was mulcted in one gale. The manslaughter of an orphan boy, whom a rule forbade to be harboured, occurred in consequence in 1851. The property is now more humanely managed.

* "The magistrates in the County of Sligo were the real promoters of the disturbances. The conduct of many of them was such as to disgrace the magistracy, and some of them deserved rather to be hanged than to be made magistrates."—*Cobbett's Parliamentary Debates*, vol. ix., p. 993, Lord Kingstown's Speech.

The greatest injury done to the Irish tenantry by the feudal system was the imposition on them of irresponsible lords, at once their landlords and their judges. Under the Celtic system, the Brehon and Priest were checks on the chief, and his equals, while an armed people tolerated few abuses. But the feudal lord was practically a petty monarch. Though the appointment of stipendiary magistrates abridged their political power, their local power in many districts continued, as landlords and agents have always been justices of the peace. For southern Kerry this description of the state of northern Donegal held good: "The landlord or the agent is constantly prosecutor, judge, and executioner in his own case." . . . "Of British law or justice the peasantry know nothing. British rule is exemplified to them by the landlord-judge, absolute in his frown, by the stern agent, by the cunning, bullying bailiff, and by the armed policeman, whose bayonet flashes before his cabin-door."—*The Landlord in Donegal*, by Denis Holland, Belfast, 1858.

"When insurrections take place in Ireland the whole blame is attributed to the people, although they most commonly occur from the corruption or neglect of the magistracy. It is seldom, however, that the hand of justice is raised to punish *them* for their misconduct. The

hear of but one Catholic magistrate in the country, although, when he wrote, a score of years had elapsed since the repeal of the penal disabling clause.

When the middle-men (or "mesne-lords") kept their lands in pasturage, their superior lords could not readily ascertain their profits. But when the bleak wastes of grazing ground were covered with industrious cultivators, it was possible to calculate their great revenues. Of old, in England, when the superior lords observed that they were losing, by subinfeudations, great riches which fell into the hands of the mesne or middle lords,* they got that statute of *Quia emptores*, which directed that the feoffee should hold his land not of his immediate feoffer, but of the chief lord of the fee. In Ireland, not having this power, they tried to effect the same purpose by chicane. The slightest flaw or oversight was eagerly hunted for, and used in the unfairest manner. Thus, if it was discovered that they had made shorter leases than prescribed by the settlements of entail, they broke them altogether. They had sought for and obtained large sums in hand on granting leases, and wherever this could be construed as a consideration for fining down the rent, the contract was unscrupulously ended, in

accounts of disturbances never reach my ears from Ireland, without exciting a wish that an inquiry might be instituted into the manner in which magistrates conduct themselves on such occasions."—*Wakefield's Account*, vol. II., p. 338.

* *Blackstone's Commentaries*, B. II., c. 6.

order that it might be set up again to competition. But immediate sums were still looked for, in the guise of "presents," either given directly or indirectly. Such lease-breaking was a common practice. "The custom of taking all advantage of such oversights is now so general," observes Wakefield, "that breaking a contract of this kind is not considered in Ireland the smallest violation of honour."* When it could not be accomplished, there was nothing for it but to await "with anxious hope" till the lease dropped, in order to reap the benefits of the alienations.†

These benefits arose, almost exclusively, out of the improvements effected in and upon the land by the unaided industry of the cultivators. "In Ireland landlords never erect buildings on their property, or expend anything in repairs."‡ What had been dignified by the name of pasture-lands were often but dismal wastes, grazed by "a few half starved cattle," where one might travel mile after mile "with the painful prospect of seeing good land drowned under water which might easily be drained off." The only signs of the presence of man were an occasional broken fence, a few "lonely inhabitants," and some sparse and miserable cabins.§ Side by side with such wastes, growing up out of them, where middlemen allowed, were to be seen farms of from twenty to seventy acres, under leases, where the tenants were "eating wheaten

* *Wakefield's Account*, vol. I., p. 244. † *Ibid.* p. 285.

‡ *Ibid.* p. 244. § *Ibid.* pp. 278-9.

bread, and living in a comparative state of affluence.”* They paid high rents, but, living on hermit’s fare, they managed to save money. Under their care, the “value of land in the course of twenty-five years has been tripled, and even quadrupled.” One superior lord, Wakefield records, “has an estate, now let under a thirty-one years’ lease, at £220 per annum; there are six years of the lease unexpired; at present it would bring an annual income of £4,000.” Another “has £7,000 per annum, but his middlemen receive £17,000.” A third owns a district which “at present brings only £2,000 per annum, but when leases are expired it might be raised to £30,000”†

Thus came the superior lords’ temptations, which they generally gratified, not as in England by taking the terre-tenant under their immediate supervision,‡ but by setting up at public auction large parcels of their estates to the competition of contractors.§ Those

* *Wakefield’s Account*, vol. I, 250-1.

† *Ibid.* pp. 255-261.

‡ “It is not the simple amount of the rental being remitted into another country, but the damp on all sorts of improvements, and the total want of encouragement and countenance which the under-tenantry labour under. The landlord, at such a great distance, is out of the way of all complaints, or, which is the same thing, of examining into or remedying evils. . . . All that is required of the agent is to be punctual in his remittances, and as to the people who pay him, they are too often welcome to go to the devil, provided their rents could be paid from his territories. This is a general picture.”—*Young’s Tour in Ireland*, p. ii., p. 59. Wakefield endorses this statement, p. 279.

§ A recent instance: “The middleman died in 1859, and it is stated that the tenants were first made aware of the difference of masters by

obtained them who offered the highest revenue, and retained them by extracting the greatest rents. The terms "land-sharks," "land-pirates," and others of a like nature, employed to designate this class of undertakers, sufficiently indicate their general character and qualifications. If it chanced that the superior lord dispensed with middlemen, the terre-tenants were not necessarily much advantaged, though they had doubtless fewer to support. Agents, venal and unscrupulous, too frequently replaced the middlemen, and in consideration of a sum paid down, and punctuality in rent and returns, they were left free to get all they could extort from the cultivators.

The mulcts paid by the tenants were feudal, and there was more system in their exactions than appeared to those who chronicled them, whilst apparently ignorant of their origin and character. Thus, a tenant was forced to pay a fine on obtaining possession.* Cases are given where a year's rent was required as "lease-money," and on one estate £10,000

seeing an advertisement in the newspapers, declaring that an unreserved auction of their holdings would take place at a certain date." They had expended about £30,000 on the property during the middleman's lifetime; they were finally re-admitted on payment of an enormously increased rent. The middleman had here been more just than the lord.—*Modern Ireland*, pp. 114-122. London: Longmans, 1869.

* "Even if the unfortunate wretch has a little ready cash to begin with, it only serves in ninety-nine cases in a hundred as a temptation to the landlord, who, when the fact becomes known to him, finds means to obtain it under the name of a fine for possession."—*Wakefield's Account*, vol. 1., p. 587.

were thus taken at a swoop by the agent.* This was identical with what of old had been usually termed a "relief;" and which, payable by the heir on coming into his ancestor's property, was fixed at one year's rent.† Pecuniary "aids," which the tenant had anciently been expected and required to yield his lord, to help him to provide a portion for his daughter and like incidental family calls, were well represented, though now invidiously termed "bribes" by Wakefield. Families and connections of landlord or agent (sometimes of both), "wives, daughters, kept-mistresses, all receive money," he states. Threats were sometimes necessary to make the lease-possessing tenant render these "aids."‡

* In 1858 cases were published where a half year's rent had to be shared between agent and agent's wife, as "lease-money" and "pin-money," when a tenant obtained a new lease. To make these obligatory "presents," the tenant borrowed money: to come up to the lady's demand, one had to sell a cow.—*Cork Examiner*, the Drummond Estates, 1858. Extortion was not confined to the classes named. In 1862 bailiffs were found practising usury on an extensive scale, and growing wealthy on the gains extracted from the poor farmers. "I have heard of persons in this position, common bailiffs, quite uneducated, surprising everyone who knew them by purchasing townlands in the Landed Estates Courts for four, five, and even six thousand pounds." Then "woe to the unfortunate tenant."—*The West of Ireland*, by Henry Coulter, Special Commissioner of *Saunders's News-Letter*: Dublin, 1862.

† *Blackstone's Commentaries*, B. II., 87.

‡ "As soon as the proprietor came of age, his agent sent notice to all the tenants whose leases had expired that there could be no renewal for them, unless the tenants each consented to pay a fine of ten guineas an acre. But this was not all—to those in possession of leases

Besides the rent, aids, and reliefs, the tenant had to pay certain "dues" in kind, and perform certain "duties." Contributions of poultry, eggs, &c., were required, as "duty-fowl," "duty-eggs," and so forth.* The "duty-work" to be performed consisted in labour given to plant, reap, and gather the landlord's crops, to thresh his corn, draw home his turf, or like agricultural services. A rate of payment was occasionally fixed, but this payment was always less, than the

a threat was held out that unless they surrendered their leases, paid the required fine, and took out new ones, a mark would be placed against their names in the rental-book, and not only they but their heirs and families would be for ever excluded. . . . The estate to which I allude extends over many miles of country, and a refusal on their part would have been sealing an act of expatriation. They had no alternative, they could only comply, and the hard-earned savings of many years were wrested from the hands of industry to be employed, perhaps, in the worst purposes."—*Wakefield*, pp. 256-7. In 1867, instances of "fines of ten guineas per acre, or very nearly half the average of the fee-simple," being exacted for full-rent leases which the tenants were compelled to accept on pain of expulsion, were stated to be common even in Ulster.—*Modern Ireland*, p. 112. *Londonderry Standard*.

* The exaction of "duty-fowl," &c. seems to have had a prototype in the "food-tribute" yielded to the Celtic chief, who had a right to his band of reapers also, and over whom, when dead, it was obligatory on the tenants to erect a "protecting tomb." For non-render, distress could be levied, as for non-render of rent. But then (as properly between feudal lord and vassal) there were duties performed by the lord as well as by the tenant; and if he got food-tribute, it must also be recollected that he gave stock, so that we read of "the heir of the chief suing for what is due of the food-rent, and the heir of the tenant suing for what is due of the stock given."—*Ancient Laws and Institutes of Ireland*, vol. I., page 187. Exactions of duty-labour are recorded for Donegal in 1858.

market value of the labour. The tenants had to neglect their own occupations in order to perform this labour.* A receipt was passed for its performance as well as for the rent-payment, and for non-performance a penal sum was reserved in the lease, to be recoverable in the same manner as rent.†

Underneath all, forming the lowest land-class, were the cottagers, cotters, or bounden-labourers, who worked on the lord's demesne, or on the land of the larger tenants, the families of the smallest tenants mostly

* *Wakefield's Account*, vol. 1., p. 507.

† A Gloucestershire irrigator mentioned to Wakefield his difficulty in getting workmen, and the reason. "It is impossible to repeat it without feeling emotions of pity and indignation: 'These poor people,' said he, 'are glad to get a holiday, in order that they may enjoy a little relaxation from their toil at a pattern or fair, because they are paid only sixpence a day for their labour, and seldom obtain a settlement in less than six months. By the terms of their lease, they are obliged to work as many days as will pay their rent; and when they have accomplished this, it is difficult to get them at all, for if they worked at home, their landlords would see them, and order them to their domains; so that they must remain idle, or work for their landlords at the paltry sum of sixpence a day.' 'And is this generally the case?' 'Throughout the whole west of Ireland you may rely upon it, sir.' 'And for what term are they thus bound?' 'For their lives, in order to make freeholders of them.'"—p. 511. Recent instances of the requisition of labour at a fixed low rent in Connaught have been published. The peasants proportioned their labour to their hire, and were vituperated as "indolent" and "lazy" by those who, living on their labour, did no work. An English Protestant clergyman, settled in a Catholic district, paid weekly, and was very popular; labourers sought him from great distances. His farm was like an ant-hill. "Wakefield," he said, "look at these poor fellows, and honestly acknowledge that an Irishman can work; but bear this in mind, that he is paid every Saturday night."—p. 513.

sufficing for themselves. There were inequalities amongst this cotter-class, arising chiefly from accident. Generally they hired a cabin and a plot of ground, which gave shelter and sustenance to them and their families; for these a rent was nominally fixed. In addition, they sometimes got "conveniences," such as a portion of pasture-land (a "cow's grass," or half, or quarter of it); a portion of tillage-land ("corn-acre" or "con-acre") for corn or flax. They gave labour at a fixed low rate in return, when required. The result of this barter of land and labour sometimes was that, each being accounted to balance the other, no money changed hands. The bounden-labourer had simply obtained shelter and sustenance for himself and his family. When the labour was computed to have outbalanced the "conveniences," the money due to him was only in one or two rare and novel instances paid at the week's end; generally months elapsed before the account was settled. In most instances, a high rent was extracted from the cotters, in addition to their villein services; and when they lived on a tenant's land, the cotter-money often sufficed to pay his lord.*

The bounden-labourers on the demesne lands either remained in this condition, or grew up into small free-

* The fact that the cotters frequently "paid the rent," acted as a powerful inducement to make Protestant tenants tolerate and protect Catholic cotters, and in some plantation-districts saved Catholics from utter extirpation.

holders at the time their lord was anxious to manufacture a body of freehold retainers for voting purposes. Elsewhere they not seldom succeeded in raising themselves in the social scale. Thus, when the large grazier found it profitable to sublet the pasture lands, many of them became established as terre-tenants. The same thing happened wherever it was sought to effect a reclamation of moorland or mountain waste.* And occasionally, by making use of the old system of co-operative knots, they were able to outbid an indolent or independent tenant of the privileged ascendancy,

* Rarely mountain-land was wholly or partly reclaimed by the landlord, who, after draining and irrigating, retained or set it to cotters. Generally the cultivators reclaimed it. "I have been astonished in some places to see the rocks cleared, and earth brought from a considerable distance to form the staple for a plantation of potatoes. Many of these minute operations are the effects of a dense population." (p. 474). Wakefield records one instance of a landlord giving unprofitable mountain-land rent-free for seven years, with timber to build cabins, and thereafter a lease for lives at 15s. per acre, if reclaimed. "I saw some patches which had been subjected to this course covered with a very good sward." He quotes from M'Farland's *Survey of Leitrim* a picture of the life of those driven upon the moors to reclaim them or die. The system succeeds; but how? "In these bogs they reluctantly throw up a kraal-like hovel, and, spiritless and comfortless, inexperienced and untaught, they dig, and work out a half-starved existence. . . . Two-thirds of the family obtain the wished-for grave, and the remaining third, squalid, emaciated, and disabled by consumption and rheumatism, underwent the remainder of existence in beggary and pain. I speak from facts to which I have been too often a witness." (p. 477.)

Recent instance of mountain-improvement: "I inspected several of these plots (of from four to five acres each) on the property of these landlords; they were square patches of bog, soft and spongy, where

to whom the sacrifices they readily made were naturally repulsive.

English writers, who observed this labour-system, regarded it as peculiar to the country, and censured it severely.* In reality, however, the whole land-system was identical with that which had existed of old in England, as may be seen from the following accurate summary:—"The rent, services, and other incidents of the tenure of estates in fee-simple were in ancient times (in England) matters of much variety, depending as they did on the mutual agreements which, previously to the statute of *Quia emptores*, the various lords and tenants made with each other;

the black mould seemed floating in pools of ink. They are colonized in this fashion. A tenant has a strong-limbed son who marries: the married man is not allowed to stay with his father; the landlord will not stand that. He cannot emigrate, for he has no money. What can he do? He takes one of these bog-lots from the landlord at from 3s. to 5s. an acre, or even higher. The official valuation is about twopence an acre. He pays one pound entrance money. He thatches up a hut of peat turf, without chimney or door, and in this hideous place he and his young wife go to live. By something like a miracle they continue to subsist on seaweed, turnips, any refuse that can be eaten, and contrive to pay the landlord his pound or 25s. of rent besides. Stone is plentiful in this howling wilderness, and the peasant labours at building a cabin of dry-stone masonry beside the turf-hut. When this is done, he procures a deal table, a stool, an iron pot, and then he settles down in his new dwelling; and, of course, as he toils on, he and his helpmate labouring with assiduous industry to raise food from this horrid patch of morass, the benevolent landlord gradually raises the rent. I witnessed this extraordinary system in the different stages I have described."—*Holland's Landlord in Donegal*, Belfast, 1858.

* *Wakefield's Account*, vol. I., p. 507.

though still they had their general laws governing such cases as were not expressly provided for. The lord was usually a baron, or other person of power and consequence, to whom had been granted an estate in fee-simple in a tract of land. Of this land he retained as much as was necessary for his own use, as his own demesne, and usually built upon it a mansion or manor-house. Part of this demesne was in the occupation of the villeins" (*i.e.*, 'bounden labourers,' 'cotters'), "who held various small parcels at his will for their own subsistence, and cultivated the residue for their lord's benefit." [These grew up into copyholders, as the others into freeholders.] "The rest of the cultivable land was granted out by the lord to various freeholders, subject to certain stipulated rents or services, as 'to plough ten acres of arable land, parcel of that which remained in the lord's possession, or to carry his dung unto the land, or to go with him to war against the Scots.' The barren lands which remained formed the lord's wastes, over which the cattle of the tenants were allowed to roam in search of pasture."*

This gives an accurate idea of the land-system in Ireland at the commencement of the present century, as has been shown from the testimony of contemporary witnesses. One exception must be made. The freeholders were not required to follow their lord to war against the Scots; the campaign for which they

* *Williams's Principles of the Law of Real Property*, ch. v. 1852.

were needed had, however, merely changed character with the times. They were now pledged to stand by him in election contests.* For this political service they were as absolutely his retainers as for that; and a contemporary unconsciously designated their position, when recording that "every proprietor has an *army* of freeholders."† In both cases the lord's interest, advantage, and dignity were in proportion to their multitude, and he consequently studied to increase their number in order to augment his power. As they would have been thought "rebels"‡ if they did not at once abandon their own crops to garner those of their lord, it is plain that to have imagined a vote against their lord's interest would have been regarded as compassing a treason. But the great majority of them, whose religion was barred out of Parliament, had then no reason nor temptation to sever their political duty from their lord's interest. The tenant was still as much as his "man" (though the ceremony may have become obsolete) as when he professed homage with the words *ego devenio vester homo*, and took the oath of fealty, which is even yet an incident of freehold tenure, though now never exacted.

* It is invariably stipulated that he must give the proprietor his vote at elections.—*Wakefield's Account*, vol. I., p. 304.

† *Townsend's Survey of Cork*, p. 468.

‡ *Wakefield*, p. 599.

"In consequence of the service required by this clause being neglected, I have seen a poor man's cattle taken from his door and driven away, without the least expression of feeling or regret."—*Ibid.* p. 245.

The position of the tenantry during this period was not altogether the unhappy one which an uncritical reading of the works of transient visitors would suggest. They judged it absolutely upon its demerits, not in relation to the country's past. Compared with that past, the cultivators had reason to regard its first years as their golden age. The license of a sanguinary soldiery, let loose upon them in 1798, despoiled and destroyed many, like the passing of a new invading army: the Union was succeeded by an increase of absenteeism, with its evils: the cessation of the Continental war did not induce, on the fall of war-prices, a correlative diminution of war-rents, so that the southern cultivators were driven into a Rockite insurrection (or agrarian "strike") to obtain recognition of the principles of economic laws. Nevertheless, the latter portion of the period was at least their silver age, as compared with what has followed.

The Celtic land-tillers had obtained the recognition of many of their ancient important rights. If there were villein-classes, it must be remembered that under the Celtic system these had representatives in the Bothath, Sencleithe, and Fuidir, who had no political rights. The casual "yearly tenant" replaced the free Fuidir. The distinction of "free-tenants" and "base-tenants" (Saer Caeli and Daer Ceili) was shown in the freehold-tenants and tenants for terms of years, which, being but a chattel-interest, and giving no voting right, was comparatively a base tenure. No-

thing less than a life estate was considered worthy of the acceptance of a freeman under the feudal system: a lease for years was a mere contract. The large middlemen-graziers appear to have resembled the ancient Celtic cow-lords. The superimposed system was alien: the tenants could not (unless by resort to extra-legal measures) control their lords as of old. These consequently confessed to no duties, whilst they exacted all rights. They claimed food-tribute, for instance, whilst not yielding stock.*

In many districts the tenants had continued, in others they revived the ancient system of partnership-tenure, presided over by local courts of judicature,†

* The custom of giving the tenant stock had continued unbroken in France. Young described the metayer farmers, "who find nothing towards stocking a farm but labour and implements." The lord "stocks the farm not one penny beyond the most pressing necessity."—*Tour in France, by Arthur Young*, vol. I., pp. 354-8.

† Compare Professor Sullivan's statement that anciently none had any right, save by special permission of the tribe-council, to the possession of a special part of the common land, except from year to year, and that a redivision of it took place annually in many localities under the direction of a local court, with the following:—"Oct. 8th, 1809, Woodlawn (co. Galway). It is common here to grant leases for three lives, or thirty-one years, to an indefinite number of persons, very often twenty (in other places to fewer; three or four often shared a townland or a farm over thirty or forty acres between them), who by law are joint-tenants, and entitled to the benefit of survivorship. This has been an old-established practice handed down from father to son for many generations. These people divide the land, and give portions to their children, which consist of a fourth or fifth of what is called 'a man's share,' that is, of the land which originally belonged to one name in the lease. . . . A certain portion of the whole farm, or take, as it is called, is appropriated for tillage, and this portion is then

and charged with the custom of gavel-kind. By feudal law Ireland had indeed been disgavelled; and the practice in Ireland had been denounced by writers, whilst the men of Kent were lauded for maintaining it. But custom preserved it, and the penal code again legalized it, so that this mode of inheritance, which prevailed in Kent, Norway, the Channel Isles, and which the Revolution revived in France, continued in Ireland. Whilst in some cases the partnership was formed by the alliance of men not akin, as when new co-operative "knots" were established, in other instances it was made by the union of the tenant's co-heirs. Thus, this tenure was promoted by gavel-kind, which a contemporary observer* calls "their

divided into lots. These lots are subdivided into fields, which are subdivided into smaller lots, each partner obtaining one or two (or more) ridges. These ridges do not continue in the hands of the same occupier longer than the time they are in tillage." [The object was that each partner in rotation should have his equitable share of good and bad soil.] "The pasture is held in common, and the elders of the village are the legislators, who establish such regulations as may be judged proper for their community, and settle all disputes that arise among them. Their houses stand close to each other, and form what is called a village."—*Wakefield's Account*, vol. I, p. 260. The compound word "gavel-kind" (*recté*, "gabhail-cine," in Celtic) literally means the "take of the tribe," and seems to have designated originally this kind of joint-tenancy, though afterwards made to signify the custom of inheritance. This system of land-arrangement has been called "rundale" or "rundeal," and the name has misled some into thinking it a confused system of commonage. Rundale, derived from the Celtic "roinn-diol" signifies, however, a "partition share," i.e., "a man's share," as translated for Wakefield.

* *Townsend's Survey of Cork*, pp. 202-252. He adds: "I have

common law of inheritance," and "which," he adds, "divides the land of the father among his sons," the daughter's share being generally paid in money, though occasionally the son-in-law was admitted. The great inducement which the English law of joint-tenancy held out for its destruction, by giving the surviving tenant of a partnership the right to claim all, was steadfastly refused. They were never known to take advantage of it, but were always seen to "suffer the father's part to go to the sons."

This system of co-operative agriculture may have dated from the entry of colonizers amongst the woods and wilds of ancient Erin. If it was of old found well adapted for the reclamation of a new country, it was now considered "not ill-suited to the incumbrances of a poor tenantry, whose chief riches consist in their labour. Two or more families, each bringing a little, are thus enabled by combining their forces to accomplish what they were individually unequal to."* By such a system were wastes of grazing, of moor, and of mountain lands reclaimed, and manures painfully brought from a distance, the seashore, or the ocean

known many instances in which the surviving lessee might have availed himself of that benefit (of survivorship) of which also he was well aware, but none in which he did." In Waterford, Wakefield (p. 280) was informed that the usual custom was to divide the land amongst the daughters on their marriages, the sons being turned adrift to shift for themselves. This, probably, was a diversity of comparatively recent importation.

* *Townsend's Cork*, p. 251.

depths.* Its continued existence through turbulent times proves the presence of elements of organization and order which merit respect. Its inconvenience began to be felt, under a politically vicious social system, with modern improvements in agriculture; and then in many cases the co-tenants assisted willingly in the dissolution of partnership, whereby separate tenures were obtained.† Examples of this kind of tenure‡ are yet to be found in the western districts of Ireland.

* "The boats are often held in partnership, the proprietors forming part of the crew. The labour of this service is often very severe; they frequently row from Timoleague to the old Head of Kinsale, a distance of seven or eight miles, spend two or three hours in cutting or gathering the (sea) weeds, a fatiguing work in which they are necessarily wet from head to foot, and return the same length of way without rest or refreshment."—*Ibid.*, p. 238. Instances where the landlords exacted a rent for the sea-weed are given in the *Landlord in Donegal* (1858), and the *West of Ireland* (1862).

† *M'Farland's Statistical Survey of Co. Donegal* (1801); *Coulter's West of Ireland* (1862).

‡ The English law recognizes three kinds, at least, of co-tenancy. In "joint-tenancy," distinguished by unity of possession, of interest, of title, and of time (or commencement), the partners have equal rights, but the survivor claims all. "Tenants-in-common" have unity of possession, but distinct titles to their shares, which may be unequal, whilst their interest may be unequal. Considered as to their shares, they were like owners of separate estates. This kind of tenure existed in Tyrone (*M'Evoy's Survey*, p. 90), where unequal proportions of land were held and rent paid. But the words "in common" misled this surveyor into mistaken censure; he fancied no tenant had a division he could properly call his own. "Coparceners" are found where two or more form an heir, as when the purchaser of freehold land dies intestate, leaving only daughters. The land is divided between them in equal shares, like gavel-kind.

It has been frequently complained that the custom of gavel-kind, here connected with it, favoured the too-minute subdivision of land. But if there be anything in this which cannot be alleged against the practice in Kent, Norway, and France, it was the consequence of a vicious political system, whereby, first, Irish manufactures were cramped for the profit of English protectionists; second, the vast Catholic majority of the Irish nation were excluded from trades in towns for the advantage of Irish Protestant monopolists; and third, the power of prohibiting the improvement of wastes was given to the lord-tenants.* Anciently, when the population of a district became dense, the young and enterprising swarmed off to these wastes where their energies found natural vent. The closing of these in other countries was compensated for, not merely by emigration, but by the opening of great sources of employment in manufacturing and commercial towns. Such has not been the case in Ireland, and this triple impediment to material progress

* "Land having been walled or trenched by a person, or the possession of it attributed to him by the poets in their songs, was legal evidence of title."—*Ancient Laws and Institutes of Ireland*, vol. I., p. 46, n. Blackstone considers property-right to co-exist only with beneficial occupation. A remnant of the ancient custom appears in the custom of Cornwall and other English mining districts, where anyone may enter on the waste land of another, and mark out by four corner boundaries a certain area. A writing to that effect is there recorded in an immemorial local court, the Stannary Court. If, after proclamation thrice given, the lord does not work this plot (for mines), the new comer or bounder has an exclusive right to do so.

kept most of the cultivators, in reality, "ascribed to the glebe."*

The questions of the security and continuity of tenure, discoverable during this period, next arise.

It is manifest in the first instance, that wherever the native system of partnership prevailed, characterized as it was by the practice of "not dividing partnership-leases as they expire,"† and by the custom of gavel-kind, there both security and continuity must have co-existed. Now, partnerships are described as being common in counties of each of the four provinces: in Cork, Kerry, and Waterford (Munster); in Kildare and Kilkenny (Leinster); in Galway, Mayo, and Sligo (Connaught); in Tyrone and Donegal (Ulster).‡ It is certain that they were prevalent in other countries, for which, owing to imperfect surveys, they have not been recorded.

Next, it is plain that in a country throughout which freehold tenures were fostered and promoted, as of particular political advantage to the lord, life-long security must have been the rule. As gavel-kind was stated at this time to be the tenantry's "common law of inheritance," it is to be inferred that it was not restricted to partnership-tenures, whilst it has been declared that it promoted them. The freehold-tenant must, therefore, frequently have subdivided his estate among his

* The British army and navy had abundance of recruits from Ireland, then: as an outlet, (enforced) emigration has superseded "soldiering."

† *Wakefield's Account*, vol. I., p. 271.

‡ *Ibid.* pp. 257-284.

sons (as indeed is acknowledged).* Here again, therefore, continuity of tenure must largely have accompanied security.

Where, as amongst the plantation-tenantry, the presence of gavel-kind cannot be presumed, the assurance of continuity is given by entries such as these : —“ On the 14th of August, 1809, the remainder of a lease of twelve acres, rent 5s. 6d. per acre, depending on the life of a person seventy-three years of age was sold for £160, without any building or local advantage to attach value to it,” and “ a lease of twelve acres, rent 17s. per acre, depending on the life of a person fifty years of age, sold for £120.”† Such sales by the tenant were really sales of his occupancy-right, and were not debarred by the existence of leases ‡

2. Remain the tenants for terms of years. Their security, though limited in time, was such, that an Englishman who has sedulously examined the condition of the country, records of it that the leases placed

* Wakefield quotes but one lease in which there was a proviso against sub-division. In that one case, the tenant could not alienate a part—but he could alienate all without his lord's permission. When farms were small, it was customary, in most places, for the tenant to alienate all.

† *Wakefield's Account*, p. 247. It is possible that some of the public sales by auction, notices of which Wakefield saw in the papers [stating that the highest bidder would get the preference] were sales by tenants under the Ulster custom.

‡ In the *Report of Lord Devon's Commission*, p. 743, James Sinclair, Esq., a Conservative landlord of high character, adduces an instance of the sale of the tenant-right (by Ulster custom) on the expiration of the lease.

"the Irish farmer in a better position than the English"—the render-element being excluded. It was complained, however, that the lords in some (southern) districts let farms to the highest bidder, by public auction, and that, then, no consideration was paid to the old tenant. This disturbance occurred in the case of holders of determinate leases. Such leases were regarded as mere contracts, and to put them up for auction was a natural consequence of the old feudal view. Middlemen held by them, and their complaints were doubtless not the least audible, though the least deserving of attention. The cotters whom they preyed upon suffered from this change of masters, as in all such cases. Where occupying tenants were the victims, they made use of their three ancient methods of self-protection; namely, waste, sacrifice, and combination.† These generally proved effectual; for by such

* *Wakefield's Account*, vol. I., pp. 578-9.

† Example first (waste). "The leases were within six years of expiration, and the occupier was selling off his stock, having let the land to cottage tenants, in order that they might break it up and run it out in time." (p. 277.) Example second (sacrifice). "They submit to any terms that the middleman may think proper to impose: he knows no instance of their quitting their land rather than accede to his terms." (p. 260.) Example third—"The 'Steel Boys,' 'White Boys,' 'Rockites,' &c., &c. Estates in reputedly turbulent districts "did not sell for more than one-half what they brought elsewhere." (p. 307.) "The combination of tenants was facilitated by the fact that leases of large districts fell in at the same time." (p. 305.)

"In every case where the occupier confides in a renewal of his lease, he will keep his land in a perfect state of cultivation, but when he finds that it is to be offered to the highest bidder, he knows that the only chance he has of obtaining a new lease is to bring the land to

means had those acquired security who now possessed it. Occasionally, as of old, the new tenants allowed the old to remain, and, exacting a per centage of increased rent, simply became middlemen.*

Over the whole of Ireland, therefore, with the stated exceptions, the tenants enjoyed, during this period, security and continuity of tenure, under certain rents. They alienated their estates in parcels or in entirety; they bought and sold them; they gave and devised them by will. The old Custom of the Country, a remnant of which has been retained by Ulster, and scattered fragments of which are discernible over the other provinces, was then received and recognized throughout all Ireland for the last time.

such a state that few will venture to bid against him; and therefore he converts it into a complete desert, or reduces it nearly to its *original state*."—*Rawson's Survey of Kildare*, p. 7.

* The agents of an absentee Duke, moved by some "religious" rancour, refused to renew the leases of 200 Catholic tenants. The consequence was a "treaty" between the new Protestant and old Catholic tenants, whereby the latter obtained leases at an increased rack-rent, and the former became middlemen. (*Wakefield*, p. 260.) Instances of this have been shown for every Plantation.

NOTE: In connexion with the question of agricultural partnerships, it is interesting to note that while they were being crushed out in Ireland, an analogous system was in process of introduction in England and Germany. The Irish labourers raised themselves to independence by the formation of co-operative "knots." The modern system is directed to elevate the position of labourers, as such, by making them participators in the management and profits of an estate, under the landlord's supervision. But for the colonies the Irish plan is allowed. For the history of a short successful experiment at Rahaline (Co. Clare,) in 1830-3, and notice of other instances, see *Co-operative Agriculture*, by William Purc. London: Longmans, 1870.

CHAPTER X.

CLASS-LEGISLATION.—ENCROACHMENTS ON UNDER-TENANTS.—A RESUMPTION OF HOSTILITIES : ITS CAUSES, AGRICULTURAL AND POLITICAL.—CLEARANCE-POLICY AND THEORIES.—EJECTMENTS AND CAPTAIN ROCK.—ELECTION OF O'CONNELL.—REVOLT OF THE " ARMY OF FREEHOLDERS."—THEIR PUNISHMENT.—EFFECT OF THE " EMANCIPATION."—COERCION AND DISFRANCHISEMENT OF CATHOLIC VOTERS.—A SLOUGH OF DE-GRADATION.—LEASEHOLDERS AND FREEHOLDERS REDUCED TO YEARLY TENANCIES AND TO MERE VILLENAGE.—VILLEIN-SERVICES.—THE EVICTION-WAR : HELPED BY THE POOR-LAW SYSTEM AND INCUMBERED ESTATES' COURT.—DEVASTATIONS OF THE DEGRADING SYSTEM.

" THAT the Irish people possess the seeds of every qualification requisite to form a happy and respectable people cannot be denied."* In this phrase Wakefield adds another link to the chain of testimony formed by the declarations of impartial visitors from Britain. It is cited here because we have arrived at a period when the sufferings of the people reached their climax, and when those who inflicted them, less frank and more politic than their immediate predecessors, occasionally attempted to excuse their harshness by blaming its victims.

* *Wakefield's Account*, vol. I., p. 296.

The lord-tenant class still formed a legislative caste, and no more flagrant instances of class-injustice can be found than in its class legislation. The productive terre-tenant class not only could never gain a new privilege, but was unable to retain its old rights, against frequent encroachments. At the time of the first ejectment—which occurred under what was then “a new and introductive law” in the Pale—it has been shown that the tenant could not be expelled until two years of non-payment had passed. That period was subsequently abridged by the lord-tenants acting as legislators. The tenants in Ireland were still further stripped of many old rights by the Ejectment Code, which dates from the Penal Code of Anne, and which was first practiced during the eviction-period anterior to 1793. During more than a score of years after this date, there was a cessation of warfare against the old rights and customs of the cultivators, for the reasons shown. A resumption of hostilities demands an explanation of the causes. They were two in number: one being agricultural, the other political, but the latter underlay also the former.

I. During the Continental wars the high prices obtained for their produce, enabled the cultivators to pay very high rents, and induced the “landlords” (of all grades) to multiply farms by breaking up the grazing grounds. When peace was proclaimed in 1815, war prices fell; but landlords could not readily be convinced that war-rents should also fall. It was

impossible, however, for tenants to pay them, and landlords, who persisted in living up to their nominal rent-roll, became involved in the meshes of that insolvency net which finally drew them into the Incumbered Estates' Court. Under such circumstances, a new act to shorten and cheapen the process of ejectment was devised in 1816 by the upper-tenants. By this Act (56 Geo. III., c. 88), they arranged that they should no longer be required, in ejecting a tenant, to proceed against him in one of the superior courts, as this method, entailing expense and delay, was a curb on eviction. They agreed that they should have the power of thrusting him out, by means of the Civil Bill or County Court, for non-payment, wherever rent was due upon a lease. It was hoped by some, graziers and the like, that they might sweep clear their pasture grounds of that industrious and improving population they had planted when it had suited them, now that they wanted them no longer, and that cattle might perchance be more profitable. From this time re-commenced that specious theorizing concerning the advantage of large farms, the superfluity of population, the inaptitude of the soil to produce cereals or textile crops, the unfitness of Ireland for anything save to be "the fruitful mother of flocks and herds,"* graziers, landlords, and officials. These excuses for evictions, which have subsequently

* *Speeches (at Cattle Shows) of the Earl of Carlisle*, Lord Lieutenant of Ireland, 1855-8, 1859-64.

been so loudly urged, were simply ornate repetitions of those heard during the previous eviction-period, from 1768 to 1793, when "every man in the interests of the graziers, or swayed by their prejudices, will tell you very dogmatically that tillage can never succeed in Ireland."*

The fact that, during the intervening period, such arguments were unheard, whilst a contradictory principle was acted upon, proves that this reasoning must have been proffered as an insincere excuse for conduct inexcusably selfish.

The new Ejectment Act was not used with much success. Attempts on the part of the upper-tenants to extort, in defiance of the principles of political economy, war-rents from the under-tenants, when these could no longer obtain war-prices for their wares, were met by combinations and open resistance on the part of the latter. Failing to extort, the effort to sweep off the cultivators, wherever tried, was met in like manner. In 1817, as in 1815, the peasants rose in armed resistance. In 1821, the formidable insurrection of cultivators, under "Captain Rock," broke out, having for immediate cause the ultra-feudal oppression practiced by an agent on the great southern estate of the absentee, Lord Courtenay. As usual in all such cases, the unsatisfactory state of the country caused an extension of the outbreak, and an

* *A Philosophical Survey of the South of Ireland*, 1777, p. 297.

enlargement of their demands from local complaints, to a general redress of grievances. To those in authority they offered to submit and take the oath of allegiance, on conditions : first, that captured insurgents should be set free ; second, that tithes and taxes on windows should be abolished ; third, that arrears of rent should be forgiven ; fourth, that rents should be lowered to one-third of their amount. ✓

The last demand would have brought the rents to a virtual level with those of England, for an English writer observed that in England one-third profit, at most, was required by the landlord ; one-third being allowed to the tenant for sustenance, and one-third for contingencies.* But, in Ireland, all but what preserved the occupiers from absolute starvation was extorted from them. The Penal Law, ordering that two-thirds of the Catholic tenant's profits should go to his lord, was continued as a rent-rule long after its extinction as a law. ✓

To restrain from evictions there was, then, the danger of desperate resistance ; there was, besides, the advantage derivable from the ownership of an army of voters. Not until this advantage was lost was the spectacle of vast expulsions beheld.

II. The political cause of the resumption of eviction-hostilities, more potent than the agricultural cause, has been likewise more permanent. It lay in the separation of interests between upper-tenants of

* *Ibid.*

the Protestant ascendancy and their Catholic under-tenants; and in their collision, when the Parliamentary franchise had been obtained by the latter. With some honourable exceptions, the upper-tenants abhorred, both as landlords and as ultra-Protestants, the prospect of their serf-class, the Catholic tenantry, being allowed to take a direct part in making laws. They regarded it with the same alarm as might have stirred the hearts of prudent Philistines, perceiving a returning sense of his strength quicken the pulse and make tense the muscles of their blind captive Samson. It seems probable that the Act for facilitating evictions was obtained partly as a prudential political measure, for, although it preceded the concession of the Catholic Relief Act, it did not precede the agitation for it. Two years before the peace, a Catholic Relief Bill was lost by only four votes; the year after the peace, when the Ejectment Act was passed, a Catholic Relief Bill was rejected by a majority of 202.

The lord-tenants* saw in the election of a Catholic,

* The terms "lord-tenants" or "upper-tenants" has been used in order to avoid the exclusive employment of the designations "landlords," and "lords of the soil"—names whose popular use has too frequently misled the members of this class into a misconception of their position in the State. Even under the feudal system there is no "landlord," or "lord of the soil," but the monarch, representing the State. The so-called landlord class is simply a class of *mesne-lords*, middle-tenants, or middle-men, generally interposed between The (royal) Landlord and the terre-tenants, but not necessarily thus interposed, and liable sometimes to be abolished, as was done, for instance, by Queen Elizabeth, in the Composition of Connaught.

O'Connell, by the Catholic under-tenants, the first signal of an uprising which menaced their authority, power, and profit.

The "army of freeholders" which each had augmented, for his own ends, had revolted. They were regarded as "rebels" by their lords, and were punished as rebels by the assembly in which their lords legislated. The same year which saw the Parliamentary franchise granted to Catholics, beheld the elective franchise wrested from the forty-shilling freeholders, to whose exercise of this voting right the former law was due.

Thus, an Irish agricultural class, which, in its rise, somewhat resembled the copyhold class of England, was thrust down for the political offence of making a proper use of a Constitutional right. And, whilst the mere manor-customs of copyholders were respected in England as parcel of common law, the ancient inherent right of Freeholders was violated and destroyed by a Parliament sitting in England, but legislating for Ireland. In this instance, as in others, the act of degradation intended for the Natives, or Catholics, was extended so as to include the Planted, or Protestant cultivators. Their hopes that the Catholics alone would suffer, that a repetition of the displacement of Catholics by Protestants* (as in the period which preceded 1793)

* Foreseeing that it would affect Protestants as well as Catholics, Mr. Seymour repelled the disfranchisement proposal. "Talk not to me," he said, "of disfranchising the forty-shilling freeholders; the democratic spirit of the age, and the spirit of the Constitution, are

would take place, were baulked by the sweeping measure of Imperial law, and baffled by the cupidity of the upper-tenants. There is no more evident truth in Irish history than that persecution injures the persecutor.

But though, beyond a few fanatical attempts at new Protestant Plantations, nothing was gained by Protestant tenants whilst they lost much, the overwhelming mass of misfortune was reserved for the Catholic cultivators who, as voters, had been, or might be, "rebels" to an intolerant ascendancy.

There was an important difference between the circumstance and effect of the passing of the Catholic Relief Act of 1829, and of those which preceded it. They had been passed in the Irish Parliament, and produced the beneficial consequences intended; the later Act of "Catholic Emancipation," so-called, was passed after the Union in the Imperial Parliament, and drew with it injurious as well as advantageous results. This was not owing to any intrinsic necessity. Had it been passed by the Irish Parliament it would, most probably, have had the same unmixed following of good which its predecessors had. And for what reason? Because the passage of any Relief Act in the Irish Parliament was a mark of the necessities, enlightenment, and good-will of the majority of the Irish

alike opposed to it." His plan was to eject Catholics, and to colonize with Protestants, and he appealed, for an example, to the period comprised between the Octennial Act and 1793.—*Speech of Rev. Mr. Seymour, &c., Sligo, 1828.*

upper-tenant class which secured its efficacy in practice. But the passage of a Relief Act in the Imperial Parliament might have been, and in fact was, owing to the introduction of new and strange factors—the liberality and necessities of others, the exigencies of Imperial policy—to which the Irish oppressed class could appeal, and by which they could succeed, despite the opposition of a majority of their unpersuaded and reluctant domestic oppressors.

The successful effort made by the latter to disfranchise the humblest class of rural freeholders (whilst the notoriously corrupt city “freemen” were left undisturbed, because they were then exclusively Protestant), was a pledge that they would do what they could to avenge and secure themselves by making impotent the “emancipated” classes. To do this, they should degrade the Catholic cultivators, or voting masses, so as to deprive them of the power of voting. The disfranchisement of the forty-shilling freeholders, though a striking deed, was but a public preliminary act of vengeance. It indicates, but does not measure, the policy to come.

From that time forth, the process of depriving the Catholic cultivators of votes went on, without appeal to the Legislature, but most efficaciously. It gradually became more and more difficult for Catholic cultivators to obtain or retain freehold tenures, because to these the power of voting was attached. The Catholic tenantry, over large portions of the country,

were persistently de-graded, until they were generally found holders for terms of years only, and consequently voteless. Many were precipitated into the condition of yearly tenants. And when, by Lord Russell's Act, it was made no longer needful to have a freehold in order to possess a vote, the effect was to make the upper-tenants anxious to thrust down all the Catholic tenantry possible into the condition of yearly tenants, in order that their command over these voters might be as strong as the circumstances allowed.

The tenant from year to year still enjoyed the right of having six months' notice, which should expire with the end of the year or be void, given him before he could be expelled. In this, he who had made all the improvements, erected all the buildings on his farm, was merely on a level with the English tenant, for whom the landlord did these things.* But the Irish landlords could not tolerate such a respite. The

* Mr. Butt, in an able work, thus states the difference between the Irish and English yearly tenants, in the matter of ejectment :—“In Ireland tenants holding from year to year, constituting now the immense majority of Irish tenants, are subject to ejectment for non-payment of rent—a process which in England cannot be used against such tenants. That process is enforced under a penal code against the tenantry, which is unknown in English law, and it is enforced in a local tribunal, and in a summary and expeditious manner, while in England the landlord seeking to get rid of such a tenant, must first serve him with a notice to quit, and then proceed to evict him by the costly and dilatory process of an action in the superior courts. The result is, that in England a recourse to ejectment is a rare and exceptional resort. In Ireland it is an ordinary occurrence, actually a part of the routine

Reign of Terror, under which the tenant lived, should be absolute. A clause was inserted into a statute regulating the Civil Bill Courts, whereby the yearly tenant could be cheaply and speedily ejected for non-payment of rent.

The tenantry, under this despoilment, clung all the more closely to their common and local customs ; but even here the scourge fell upon them ; little was left undisputed which they could not maintain by force ; emblements were grasped at, and privileges, recognized and sanctioned by the Cromwellian foe, were contested and denied by the usurping upper-tenants, in a time of peace. That they did preserve, through such a period, vestiges of their freehold and other customs, which were the modern forms of ancient rights, has been already proved for each of the four provinces. It is an evidence of their tenacity of purpose and resoluteness of action.

The condition of the majority of the cultivators was brought to the lowest slough of de-gradation. They who had generally been freeholders were now precipitated into a state which was but a scantily modified form of pure villenage. As all the abuses, with none of the security, of the preceding period, in many districts, remained, the ancient villein-services were themselves discoverable.

management of some estates—employed upon others, as Lord Dufferin tells us, as a pressing mode of demanding the rent. *The Irish People and the Irish Land*, by Isaac Butt. Dublin : Falconer, 1867, p. 190.

The position of the Irish tenants, during this period, may be defined in the words by which Blackstone describes the position of villeins in England: "They held, indeed, small portions of land by way of sustaining themselves and their families, but it was at the mere will of the lord, who might dispossess them whenever he pleased."* The Irish lords not only transformed the law so as to enable them to resume possession with curt delay, not only, as a usual and general practice, seized upon all the cultivator's buildings and improvements, confiscating them to their own advantage, but finally carried their desires so far as to attempt to force on the tenants written contracts or "leases," binding them to deliver up all their crops also at three weeks' notice from their lord.† Von

* *Blackstone's Commentaries*, B. II., c. 6.

† Lease of William Scully, landlord, 1868. Clause I. bound the tenants to pay, besides the rent, the entire of all rates, taxes, duties, or assessments, whatever. Clause II. swept from them all title and claim to emblements, or any customary or way-going crop, or portion of a crop growing when the tenancy ended, or any compensation therefor; "any statute, usage, custom, right, or thing to the contrary notwithstanding." Clause III. forbade them to prune, lop, or cut down any tree, bound them to improve and keep in repair, and ordered that on any 1st of December, 1st of March, 1st of June, or 1st of September, "which shall next follow the expiration of twenty-one days (Sundays included)" the landlord should be entitled to immediate possession of the tenants' lands, premises and appurtenances. Clause IV. stipulated that it sufficed to post the notice on the tenant's house. Clause V. provided against con-acre. Clause VI. decreed that tenants should not make any building, dyke or drain, ditch or fence, without the landlord's written authorization. Clause VII. forbade them to burn soil; to till more than one-fourth part; to meadow more than one —th part

Raumer, the German traveller, was at a loss for a term to render accurately into German the meaning in Ireland of the designation, tenant-at-will. His statement declares their condition: "How shall I translate tenant-at-will? Shall I say serfs? No; in feudal times serfdom consisted rather in keeping the vassals attached to the soil, and by no means in driving them away. An ancient vassal is a lord compared with the present tenant-at-will, to whom the law affords no defence. Why not call them *Wegjagdbare* (chaseable)? But this difference lessens the analogy—that for hares, stags, and deer there is a season during which no one is allowed to hunt them, whereas tenants-at-will are hunted all the year round. And

of the land, and bound them to "carefully and effectually protect and preserve all wild fowl, and game of every kind, for the exclusive use and sporting of the said landlord, his heirs and assigns, and of all persons authorized by him or them to sport thereon." Finally, the tenant was allowed to surrender his farms at three weeks' notice, and "hereby surrenders all former leases, agreements, proposals, and contracts of every kind."

The landlord, in his attempt to compel the tenants to accept this, or become outcasts, was supported by a police force, specially ordered to his assistance from head-quarters, Dublin. The tenants made a desperate and successful resistance, and, by this chance, the matter became a public scandal. Official rewards, however, were offered for the punishment of the resisting tenants, and nothing saved them from eviction, but the interference of a benevolent neutral, who purchased the estate. The case was exceptional only in a few points, especially in the successful resistance which gave it publicity, but practices as infamous were usual. See the Lease in full, and typical instances of confiscation, "felonious" in character (as Lord Clarendon described it), in *Modern Ireland*, Appendix I., Longmans, 1869.

if any one would defend his farm (as badgers and foxes are allowed to defend their covers) it is here denominated 'rebellion.'"

Again, Blackstone mentions, as an incident of villenage, that the villein held his land "upon villein service; that is, to carry out dung, to hedge and ditch the lord's demesne, and any other the meanest services." But some of these, as has been shown, might have been incidents of freehold-tenure; what was distinctive in villenage was that this rent, render, or service was "uncertain" in time and quantity. The "duty-service" done by the Irish freeholder was consistent with his tenure, because it was fixed: he had security, and his lord could not exact more than what was in the bond. But when that security of tenure was destroyed, when the freeholders were reduced to yearly tenants, their dependence for continuity of tenure on the lord's pleasure made them simply unable to withstand any demand or exaction, so that their rents and services had the villein's element of uncertainty. An observer in 1858, recording the results of his personal inspection of a north-western district, writes: "The peasants come at certain times—the poor wretches say they dare not refuse to come—and dig and plough, and sow the landlord's own farm, that is to say, the (arable) land he took from them when he purchased the property, and they never receive a shilling of pay."*

* It is to be remarked, also, that this landlord was a retired clergy-

Again, "A villein could acquire no property either in lands or goods; but, if he purchased either, the lord might enter upon them, oust the villein, and seize them to his own use."* That this was practically the case with the Irish tenant is evident, when it is considered that all the improvements had been made, all homesteads and buildings erected, by the tenants, at their own cost and labour, and yet that their lords could and did confiscate them to their own use and profit. Since this usurpation, which Lord Clarendon recently called "felony," prevailed over the country, and was only foreborne when friendship or force hindered it, it is plain that actual villenage, in its worst form, had been made general in Ireland.

Nor was there wanting the insult, a characteristic incident of the lowest villenage, involved in a tyrannic interference with domestic rights. "In many

man of the then Established Church, and a new landlord, a purchaser in the Estates Court. In these capacities he would have been the least likely personage to continue such customs, if they had not had a wide existence in the district. He had, besides, as a new purchaser, confiscated the tenants' mountain commons, and a portion of the land they had reclaimed to tillage from the mountain side. His case is a proof that new landlords continued old customs, where profitable to themselves, but made new exactions also. Of the great estate of another landlord, one of the wealthiest of Irish commoners, it is written:—"His tenants complain that not only have they to give their landlords the 'duty-days,' but they are forced to draw turf, not for himself alone, but for his agriculturist, his steward, his gamekeeper, and any other insolent menial who chooses to bully them in the name of the all-powerful landlord."—*Holland's Landlord in Donegal*. Belfast, 1858.

* *Blackstone's Commentaries*, B. II., c. 6.

places," wrote Blackstone, "a fine was paid to the lord, if the villein presumed to marry his daughter to any one without leave from the lord."* In Ireland, in 1858, after a personal inspection of large estates in the south-west, an author writes: "A poor widow whose cabin I entered, had the temerity to get her daughter married without the necessary permission from the office; an ejectment notice was the immediate consequence, withdrawn only on the payment of three gales of rent, raised by a sacrifice of the little produce at her disposal."† The "rule of the estate" forbade marriage, unless permission had been obtained. The chief distinctive characteristics of villenage—insecurity of tenure, and uncertainty of rent or render—have been also during this period the principal grievances of the Irish cultivators. The special exceptional characteristic which marked out this villenage of degraded freeholders in Ireland from villenage elsewhere was, as Von Raumer points out, the eviction-war made against the tenants by their lords. This war became ruthless in purpose and vast in proportions.

Originating in the political and agricultural causes described, it grew upon the vicious social state formed under the system which, subordinating Irish manu-

* *Blackstone's Commentaries*, B. II., c. 6.

† *The Lansdowne Estates* (Co. Kerry), by Thomas Crosbie, Cork 1858. Several other cases are given where punishments were inflicted for violations of this local ukase. The *Times'* Commissioner (1869) refers to similar rules enacted in Midland Counties.

facturing interests to English protectionism, and Irish Catholic rights to Irish Protestant monopolies, had driven the people upon the soil, and left them to the exactions of upper-tenants, who, absent or present, were neglectful or hostile. And, as medicines which suit to set right the disorders of the strong prove injurious to the enfeebled body, so certain legislative measures enacted for remedial ends did great damage, because the abnormal state of society in Ireland was not first considered and amended.

Thus it was with the Poor Law, which came into operation in 1838-9. To secure themselves against possible liabilities, many landlords evicted largely in anticipation of it. This was an evil which even a good measure might have wrought, in a country whose social condition was so unsound that the millions of under-tenants were abandoned utterly to the fate prescribed by the changing interests of the few hundred upper-tenants. But the measure was so different from that passed for England, so aptly imperfect, that it has constantly held out inducements to the prosecution of a war of eviction. The system of parish settlement was not extended to Ireland; a scheme of electoral division rating was established in place of union-rating. The Irish upper-tenants, by means of this cunning change, enabled themselves to expel all who had grown nigh exhausted in producing rent for them from their estates, and to thrust the burden of their support upon adjoining towns. "It would be

impossible," observes a witness,* "to describe the odious acts of oppression that were then perpetrated, consequent on this electoral division rating. The poor were driven into the towns, estates were 'cleared,' and notices to quit were served. If that did not answer, the houses were levelled. Perhaps fifty families were 'cleared' [thrust out] for every three or four kept.† The only refuge of those poor families then was to go into the town," where, after dragging out a miserable existence, they became chargeable. Some of the young and healthy went to England and Scotland, comparatively few, at first, to America, to which the emigration flood of the expelled afterwards flowed. Not only the plan of striking the rates, but the mode of levying them was adverse to the well-being of the cultivator. Though landlord and occupier had each to pay his proportion, the rates were wholly levied off the occupying tenant in the first place. Afterwards, he could demand a deduction from his land-

* *Butt's Irish People and Irish Land.* Speech of Mr. James O'Connell, p. 123.

† As typical of the extent and cruelty of the eviction war, take this instance: J. Walsh, Esq., Justice of the Peace, destroyed, in 1845, near Belmullet, Mayo, an entire village, excepting six houses, according to the evidence of two English writers, Mr. Tuke and Mr. Poulett Scrope, M.P. The latter says:—"In two neighbouring villages *fifty* houses were levelled. All this in mid-winter!—forty miles from the nearest workhouse!—and no less than one-hundred-and-forty *families* out of those thus dispossessed are now seeking relief from the union, while the proprietor who evicted them has not paid the rates due from him, though sued at law for them." *A Plea for the Rights of Industry in Ireland*, by G. Poulett Scrope, M.P. London: Ridgway, 1848, p. 78.

lord, when paying his rent. But as, during the pressure of hard times, and especially of the famine, rates rose high, ranging occasionally from five to eighteen shillings in the pound sterling, the tenant at best was deprived of considerable capital until rent day came round; at worst he had (as too often happened) to see his stock and implements, his furniture and household goods, seized and sold for a debt due not by him, but by his lord. Then, deprived of the means of making up the rent, he followed into pauperism those to whose support he was sacrificed, by a vicious system. Naturally, also, when a famine followed on the potato-disease, for want of sincere statesmen to devise or accept bold remedial projects, landlords evicted through fear of intolerable burthens, under which, however, not a few of their number fell.

Another legislative measure passed to "facilitate the sale of Incumbered Estates" * (1849), was one which failed in producing unmixed good, through the same essential cause as the poor laws. Had the cultivators enjoyed security in tenure and certainty in rents, a change of landlords might have been little to them—a change from insolvent to solvent lords might have served them. But they were mere villeins, removeable at their lord's pleasure, whilst their interests were

* 11 & 12 Vic., c. 48, 12 & 13 Vic., c. 77. The powers of the Incumbered Estates Court were extended to the sale of estates not encumbered, and its continuance secured by an Act passed in 1858, establishing "The Landed Estates Court."

never considered in the sale. The Act, professing to give a clear title, discharged the estate purchased from any other claims than those specified, among which no parole rights or customs of the tenantry were included. The principle then acted upon was well expressed by Lord Palmerston, when he declared that tenant's rights meant landlord's wrongs.

Herein we see the vast change wrought upon the feudal system by unjust class-legislation, for anciently a lord's estate could not change hands unless the tenants, by attornment, consented to accept the new lord.* Yet they had that freehold security and certainty whereof the Irish tenants were despoiled.

During eight years, from October, 1849, until September 1857, the Incumbered Estates Court sold £25,190,839 worth of land, of which £24,229,027 passed to creditors, including £3,692,611 to purchasing encumbrancers. Its powers were, in 1858, extended to the sale of non-incumbered estates, and its jurisdiction perpetuated in the Landed Estates Court.

Much advantage has, no doubt, been derived from the convenience and cheapness of land-sales effected by these courts : but to the unprotected cultivators their work has been fraught with almost as much evil as a new Invasion. If the new landlords did not come upon them in a mass, their gradual introduction resulted not so much in influencing the new lords to

* *Co. Litt.* 310 b.

adapt themselves to existing customs as in prolonging the torment of the cultivators and in making their losses of rights and customs more searching and more complete. An invasion once over and the invaders settled, there was hope. But now the intrusion of new lords was made perpetual, and their frequent change a matter of no unusual occurrence. The new upper-tenants, also, were a mixed class. Some were honourable and considerate. Many were simply investors who, seeking the highest possible per-centage for capital expended in the purchase, respected no rights nor any customs, and regarded the old tenants as mere rent-producing machines to be worked to the utmost, or superseded by other rent-producing machines—animal or mechanical—as it might suit their exigent interests best. There were many of this class who, buying, in anticipation of great profits, were disappointed and sold out quickly. Some, finally, were land speculators or land-jobbers, gifted with the most cunning commercial instinct, who scrupled not to deal with estates as they would have dealt with other articles of commerce. They bought when the market was low and sold when it was high, thus insuring frequent change of lords. They raised the rent to a high multiple of its former amount, when they became purchasers, in order that when they appeared as vendors they could point to a great rent-roll, leaving it to the purchaser to extort or evict, as he could. They willingly agreed to stipulations to “clear the estate” on negotiating

its sale, in order that a newer purchaser, a grazier or large farmer, should have no more trouble than that of razing the homesteads where the ancestors of tenants, now fugitives, had been settled for centuries.

So stood, in 1870, the de-grading system when, after having attained its climax, provoked two general attempts at insurrection and many minor agrarian outbreaks, it was considered urgent to devise a real remedy. Under that system, authorized by its ejectment code, devastations have been committed which exceed the transplantations of Cromwell in magnitude, outvie them in the cruelty of their accompanying circumstances, and far surpass them in the amount and persistence of the hostility they have evoked. To destroy it is not only to free the State from a danger, but to purify it from a taint of tyrannic revolution. For it is a system which must fall to the ground on the recognition of ancient customs which are the life of the common law.

CONCLUDING CHAPTER.

GENERAL CONSIDERATIONS.—A HISTORY OF ULTIMATE SUCCESSES.—
TRIUMPH OF RE-GRADING POLICY, AND PROSPECT OF AN EPOCH
OF PROSPERITY.—CESSATION OF CLASS-WAR.—COMMUNITY OF
POLITICAL INTERESTS BETWEEN LANDLORDS AND TENANTS RE-
STORED.—THE PROVISIONS OF THE LAND ACT OF 1870 STATED
IN PLAIN LANGUAGE, WITH CRITICAL NOTES.

THE record of the condition of the cultivators, from the invasion of the Anglo-Normans, has not shown them reduced to one low level of monotonous oppression. It is, on the contrary, a history of remarkable fluctuations. Great reverses of fortune have indeed appeared, but it renders the portrayal of their misfortunes less saddening to discover that, knowing how to draw strength from suffering, they always arose after their periods of depression. It is even inspiring to observe that their history is one of ultimate successes.

The period of their greatest depression has been comprised within these latter years, and it seems more than possible, even most probable, that their epoch of greatest elevation in security and prosperity has arisen.

It is not only that a Land Act* has been passed which, however, it may need amendment in working details, concedes almost all the principles contended for. It is that, along with this, the social system has been revised and the monstrous anomalies which made thorough security and progress impossible, are in course of being eradicated.

Before the triumph of equal rights, prejudice, with undue privilege, passes away. The essential causes of political hostility, are thus being removed from between landlords and tenants, who are now replaced in more suitable relations as tenants of different grades, subject in every grade to important restrictions, confessing to duties as well as claiming rights. The desire as well as the power of the upper-tenants to hold the under-tenants, as serfs, has been limited—it might be said to have been extirpated, if it were not impossible suddenly to destroy the force of habit or altogether to eradicate the greed of gain. The tenant's question is, however, fast changing from one of special oppressions to one of general influences, though the tradition of the former may remain for a time to impart a vanishing taint of acidity.

The destruction of the last bulwarks of a Protestant Ascendancy Pale destroys the principal obstacles to a union of political interests, by leaving the Catholic cultivators nothing special to agitate against, and

* 33 and 34 Vic. chap. 48.

the Protestant landlords no peculiar institution to guard by oppression or eviction. The concession, in principle, of the demands of the cultivators, as tenants, abolishes the class-war waged between landlords (Catholic and Protestant) and their tenantry (Catholic and Protestant). The dread of aggression being removed by the grant of justice, the old precautions against aggression fall to the ground, and with them perish the bad feelings they engendered and fostered. The Protestant landlord is replaced in a position to cherish the same cordial understanding with his Catholic tenantry, as was not seldom found from 1793 to 1829*, when the latter were impotent to trouble him. All landlords, as such, are reset in a condition to cultivate those close relations of citizenship, which Lord Cloncurry observed to prevail before the necessary agitation of the class question of tenant-right.

It is a guarantee of their permanence now, that the existence of such cordial understanding and good relations is possible, not as before because of the impotence and degradation of any class, but by the equalization of the rights of all. But, though the dividing obstacles are being removed and the elements

* That this period was looked back upon, by the tenantry, as (materially) a golden age is indicated in this passage from Lord Rosse's pamphlet: "I well recollect the glowing terms in which several old people were wont to speak of the plenty in their younger days—bread, meat, and the best ale being the ordinary peasant's fare." That was during the period of leasehold security.—*A Few Words on the Relation of Landlord and Tenant in Ireland*, by the Earl of Rosse.

mingled in just proportions, it may require the electric spark of some common national desire to effect a cordial union.

It is, therefore, under favorable auspices that the Land Act of 1870 appears. Many extrinsic inducements to make search for flaws and to wrest its provisions to a distorted use have vanished or are disappearing. Nevertheless, as leniency is not liberty, it will be necessary to watch it closely in action, that the operations of so complex a machine be made to bear out the fair promise of its performance.

The social problem to be solved was itself complex.

This history of Irish land tenures furnishes many examples of the manner in which the State has dealt in Ireland with landlords and tenants. They were adduced as precedents to show how freely it might deal with them, and yet not innovate. This was rendered necessary by the narrow conception of public rights in relation to landed property, which it was the interest of many to put forth as a public opinion, sanctioned by tradition and law. The State has since exercised its rights with a free hand, though not to the full extent which precedent would have permitted. It was natural that, owing to alteration of times and circumstances, the least rigid course should be adopted. Yet, though some think this must mar the accurate accomplishment of the object designed, we believe that it has not excluded any principle; while it is to be hoped that it will practically

gain as good an end by milder means. If the hope prove vain, resort to firmer measures is still available.

Thus, the State, following Elizabeth's action in Connaught, might have ordered a Composition to landlords in lieu of uncertain rents, and decreed that, on account of equivalent granted, "After decease of everie of them now livinge, the aforesaid rents, duties, and all exacons shall from henceforth be utterlie determynd and extinguished for ever." By the present Act, the establishment of a peasant proprietary (such as this would have effected) is left to the operation of voluntary sales and purchases. The State, however, interferes not only to remove the obstacles which heretofore hindered such sales, but encourages the tenant to become owner of his holding, by advances of public money

Not only, therefore, is that object of the Composition of Connaught made possible, but the Court which has been the means of introducing the persistent modern danger of strange landlords, is made the means of disseminating a radical remedy.

Under this section, there is given grounds for expecting to behold, with each succeeding year, the growth and development of a peasant-proprietary. Its existence and enlargement, which depend greatly on the enterprise of the cultivators, will not only constitute an intrinsic good, but cannot fail to exercise a beneficent influence on the relations between landlords and tenants elsewhere, so long as such relations

continue. By the co-existence of both systems of landholding, the country might enjoy the advantage of what is good in the "landlord," i.e., the single middleman system, and in the peasant proprietary or direct system.

In order that the provisions of the Act may be readily intelligible to the general reader, and their relationship to ancient principles and customs existing in Ireland may be plainly seen, the principal portions of the act, divested of technicalities and stated in simple language, are appended, together with some notes and observations. It is the province of others to describe their strictly legal bearings.

Landlord and Tenant Act, 1870.

PART I. COMPENSATION TO TENANTS.

- 641
1. The usages forming the Ulster Tenant-right Custom are legal for Ulster. The Custom may be extinguished, in any holding, by the landlord purchasing the tenant's interest—or, by tenant obtaining compensation under a different section of the Act. If he does not claim by benefit of custom, he is allowed to claim (with consent of Court) under any other section, except that relating to compensation in respect of payment to incoming tenant.*

* The revival of "the old equity of the kingdom," in the sanction given to ancient customs, is a notable characteristic of this Act. The legalization of the so-called "Ulster Custom" is particularly important in principle, because it is the legalization of continuity of tenure, under a certain rent, with power of alienation of the tenant's whole estate by bargain and sale. It cannot, henceforth, be asserted that such principles are unknown to the law, even with regard to the under tenants. It has been amply shown, in the preceding pages, that the

2. An usage similar in essential particulars to Ulster Custom,

upper-tenants got them sanctioned by law, for their own use and advantage, at the Restoration, when the power of their landlord, the king, had become enfeebled. The value of this section to the tenant will much depend upon the decisions of the Courts, as to what the usages of particular districts may be. It is particularly important, therefore, that the fact that such custom is essentially a Parole Copyhold tenure should be generally understood ; and that encroachments upon the custom, which hitherto were artificially maintained by force, should not be admitted to the injury of its vital elements. Some appear to think that by the employment of the word "usages," the act sanctions encroachments, and that innovations or "rules of the estate" may be pleaded to debar claims. This is a misconception. The Act does not recognize usurpations. It legalizes distinctly "the usages prevalent in the province of Ulster, *which are known as*, and in this Act intended to be included under, *the denomination of the Ulster tenant right custom.*" It is a matter of notoriety that such custom guarantees to the tenant security of tenure at a fair rent, and the right of sale. The lord's will could not unmake any copyhold or other custom : for it is of the essence of the custom that it controlled the will of the lord. (Blackstone, B. II. p. 93.) Copyholders could take an action for trespass, from the reign of Edward IV., against a lord who attempted to eject them without sufficient cause (Co. Litt. 61a). If the present Act does not go so far, it yet shows by its penalties on disturbance that limitation of the lord's will, not legalization of his "rules," is its object.

The question of reviving the custom in any locality where it has been suppressed by superior force, is one which becomes of importance wherever any existing tenant can be shown to suffer injury from its extinction. The mere edict of an upper-tenant, or his agent, though it may have prevented sale to the occupying tenant at public auction, could not destroy the vitality of the custom ; and the tenant, if he has given, even secretly, anything in consideration or acknowledgment of his predecessor's title is himself a tenant under the custom. So, likewise, the encroachments of some landlords who have raised rents, or exacted fines to an extent which violates the custom, cannot be pleaded as having legally destroyed the custom in any locality. They are the encroachments of late years, and memory of the custom precedes and should override them. A strenuous effort

existing in the other provinces is legal. Its modes of extinction are the same. The tenant who prefers not to claim benefit of custom can claim, with consent of Court, under any other section.*

Other Tenant-right Customs. especially ought to be made to vindicate the customary rights against the selfish exactions of some landlords, who have dealt with lands purchased in the Estates' Courts in a most despotic manner. Sales, at any time, in the Estates Court could not, in justice, discharge the lands sold from the ancient customs, unless, indeed, there were a common consent of all parties, tenants as well as landlords, to show. At present it is self-evident that no provision under such sales could overrule the statutory rights of the tenantry. The decision of the judge of the Estates' Court, in the case of the Marquis of Waterford's tenantry (who appealed to him to record their customary rights previous to the estate-sale) is to this effect, and it seems strange that there should have been a doubt upon the subject.

This statute creates no new rights under Sections 1 and 2. It simply gives formal legal sanction to what might be called the common law rights of the tenants. That formal sanction would not even have been necessary but for the forcible encroachments of landlords and for one adverse decision of a judge. In legalizing the Ulster and other similar usages, it recognizes and legalizes, therefore, their previous existence. Hence, previous sales in the Estates' Courts can no more be held to have discharged estates from these customs, whose previous existence is legalized, than sales made since the passing of the Landlord and Tenant Act of 1870.

It is urgently incumbent upon the tenantry (north and south) to form associations for the full vindication of their rights under the Act, and to concede to no encroachment which they can legally contest. At the present time it is especially true that "eternal vigilance is the price of freedom."

* It was one especial aim of the author of this volume to prove that what was called the "Ulster Custom" had really its origins in the south as well as in the north, that the Parole Copyhold had extended over Ireland, and that remnants of it yet remain in counties of every province. This important fact appeared to have been unknown to the public: the conditions of the Ulster plantation were remembered, whilst those of the Munster plantation, though quite as important, escaped

3. When the tenant either has not, or does not claim, such custom, and is disturbed in his holding, by an act of his landlord, he is entitled to claim compensation from his landlord for loss sustained in having

Compensation
in absence of
Custom.

attention. With great gratification, the author acknowledges that the framers of the Act have recognized the propriety of giving the same legal sanction to the usages found in the south as to those found in the north. In so far as they have been moulded to modern form by the copyhold customs (though embodying ancient Irish rights), the usages of Munster can claim a somewhat greater antiquity than those of Ulster, since they date from Elizabeth's plantation, whilst the latter date from that of James I. As far as they are not Celtic, the Leinster usages are as ancient, in part, as the invasion; in part, they date from James's "Leinster plantation," which comprised the counties of Wexford, Leitrim, Longford, King and Queen's Counties, and Westmeath. (*Carte, Life of Ormond*, vol. I., p. 22).

The methods of extinction of the customs in Sections 1 and 2 are identical and fair. They might, however, have been supplemented by a method adopted for the commutation of copyhold rights in England (suggested as precedents, p. 64 n.) with much advantage in certain cases. To some extent these precedents appear to have been adopted in principle. Thus, the power of voluntarily commuting his rents and interests into a rent-charge (embodied in the voluntary copyhold acts) the landlord may be said practically to possess, in the section which enables him to sell a holding to the tenant. The plan of charging the "enfranchisement" money on the lands is likewise similar to a plan embodied in the present act. There is even a reminiscence of the compulsory copyhold act, in the power given to tenants to compel the sales of their farms to themselves as purchasers, when the landlord's estate should have passed for sale into the Landed Estates' Court. Such enactments must be confessed to be, in the highest degree, satisfactory. But, it seems to the writer, that there is room for following the precedent of the compulsory copyhold act a step further, by giving to the tenants of absentee corporations, and, perhaps, of absentees generally, the power reserved to English copyhold tenants under that act, *i.e.*, the power compelling the sale of a holding to the occupying tenant who is prepared to pay a bulk sum in compensation.

If this power be yet denied to the Irish customary or other tenant, he has, on the other hand, a power of obtaining an advance of public money which the English tenant does not possess.

to quit. The award of Court is limited by a scale. For holdings rated at £10 and under, it may award a sum as compensation for disturbance not exceeding seven years' rent; for holdings rated above £10 and not above £30, a sum not exceeding five years' rent; for holdings above £30 and not above £40, a sum not exceeding four years' rent; for holdings above £40 and not above £50, a sum not exceeding three years' rent; for holdings above £50 and not above £100, a sum not exceeding two years' rent; for holdings above £100, a sum not exceeding one year's rent. In no case shall this compensation exceed £250.

A tenant in a higher class in scale may claim under a lower class, provided his compensation be made proportionate.

Tenants rated under £10 who shall claim compensation for disturbance exceeding five years' rent, and tenants rated above £10 claiming more than four years' rent compensation, shall not be entitled to make an additional claim for improvements unless there be permanent buildings or reclamation of waste lands.

From the compensation sum may be deducted arrears of rent and taxes due, or damages for deterioration of holding, owing to non-observance by tenant of any express or implied agreement.

No compensation for disturbance can be claimed by a tenant (nor by his sub-tenants) who, after the passing of Act, subdivides or sub-lets, without written consent of landlord, or who, (after written prohibition by landlord or agent) lets any part in conacre, except it is to be and is solely used for growing potatoes or other green crops, the land being properly manured.

A tenant under a lease, of not less than 31 years, made after the passing of Act, shall not be entitled to claim compensation under this section, but may claim under section 4.

The tenant of any holding, rated at and under £100, and held under a tenancy from year to year, existing at the time of Act passing, is entitled to compensation if disturbed.

Any contract made by (forced on) tenant, depriving him of his right to make any claim, to which he would otherwise be entitled under this section, shall be void.

This provision shall remain in force for twenty years from 1st January, 1871. It is, however, subject to the enactment contained in the section relating to partial exemption of certain tenancies.*

* This Section has brought some severe censure on the Act as destined, if not designed, to root out the small farmers. The incentive to such a work is supposed to be the scale under which the smallest holding secures for its tenant the greatest rent-multiple of compensation on eviction. This view is somewhat general, but its accuracy in the writer's opinion, may be doubted. The authorship of the scale has been claimed for a tenant-right Member for Cork county, and cannot, therefore, have been intended to do mischief. Is it calculated in its operation to eradicate the class of small farmers? It must be admitted that it is unlikely to encourage their increase: but it seems to the writer not probable that it will cause their extirpation. It must be remembered, in the first place, that the landlords and tenants are no longer political enemies. This is a highly important consideration, for it removes one great impulse to eviction. It may now even give an impulse to the increase of small holdings. To prevent disestablishment or the enactment of this land-law, many landlords would have made considerable money sacrifices: but few would be inclined for the sake of some large-farm theory to mulct themselves heavily, by expelling the small occupying tenants from their estates, in order to try an experiment that experience has already shown to be frequently delusive and costly. The large-farm craze appears to have passed, and it has by no means proved to landlords that it yielded them the same remuneration as did the small-farm system, whenever the tenants were (as now all are) prepared and willing to adopt the most advantageous methods of cultivation. The facility of obtaining rents, which used to be pleaded in favour of the large-farm plan, is now extended by the sections of this act to the small-farm system: for the small farmer risks absolutely seven times as much as, and relatively still more than, the large farmer risks, by subjecting himself to ejectment for non-payment of rent. The landlords will, therefore, have greater security of obtaining their rents from the small than from the large farmers, not to mention that the bankruptcy of a speculative large farmer would cause his landlord to suffer greater loss than the default of several small farmers. For all of which reasons it seems im-

4. Any tenant not entitled to, or not claiming, benefit of custom, may (subject to the provisions of section 3) on quitting his holding claim compensation for all improvements made by him or his predecessors in title. **EXCEPTIONS** :—He can only claim for permanent buildings or reclamation of waste, if they were made before passing of the Act, or twenty years before the claim is made; nor for improvements prohibited in writing, as appearing to the Court calculated to diminish general value of landlord's estate, and made within two years after Act passed, or made during unexpired residue of lease granted before it passed; nor for improvements made by contract, in return for valu-

probable that the effect of the scale will be to root out the small farmers, wherever established. The possibility remains; and to guard against the exceptional manifestations of eccentricity or spite, it will be requisite narrowly to examine the operation of the section, in order to obtain that reform which it can no longer be the interest of any party to struggle against. Then, either a uniform limit of compensation might be adopted, leaving the courts to decide the fit sum to be given as damages in each case, or the power of ejectment should be restrained to cases of non-payment of rent, non-occupancy, or flagrant neglect, proved to the satisfaction of the court. Such a limitation would still fall short of ancient precedent: but it would be congruous with the old copyholders' right of freedom from ejectment, except for just cause proved, in answer to an action for trespass.

The scale seems certainly adapted to hinder the increase of small holdings, whilst their multiplication in many southern districts would help to bring into them the prosperity of Ulster—once the poorest of the provinces. On the other hand, there may be such material and political advantages accruing to the landlord, in the establishing of capable small farmers, as to counteract this tendency of the section.

The annulling of forced contracts is a clause whose absence would have made the Act a delusion. Its limitation in time is, however, a concession which should have been resisted, if it were not believed that before it shall have expired leases again will be the rule, and an improved state of feeling will render its renewal easy. No state of good feeling could render its continuance unnecessary, as such restrictions are for the exceptional men of ill-will.

able consideration ; nor for any improvement made in defiance of a written contract not to do so, (subject to the rule as to contracts) ; nor for any improvement the landlord was willing to make in a reasonable time.

A tenant holding under lease or written contract made before Act passed, is not entitled to compensation for any improvement, his right to which is expressly excluded by it.

Exception of
certain tenan-
cies.

A tenant holding under a lease for 31 years, or (in case of leases made before the Act) for life or lives, with or without years, which shall have existed 31 years before making of claim, shall not be entitled to compensation for any improvements (unless mentioned in lease) except for permanent buildings, for reclamation of waste land, and for tillages and manures, the benefit of which is unexhausted, at time of leaving.

A tenant, leaving of his own accord, shall not be entitled to compensation for improvement, where it is shown the landlord gave him leave to dispose of his interest to an incoming tenant upon reasonable terms, and the tenant refused or neglected.

Deductions to be made from compensation sums, for arrears of rent or taxes, and for damages, as before.

Contracts prohibiting tenant from improvement needful for suitable occupation and proper cultivation are void. No improvement is allowable which seems to Court to diminish general value of landlord's estate.

Nor is tenant authorized to break up (without previous written consent of landlord) land usually or expressly let as grazing or meadow, or cut timber, except timber planted and registered by him or his predecessors.

Contracts by which a tenant is deprived of his rightful claims are void.

Where a tenant has made improvements before the Act, he shall make reductions on the compensation sum in proportion to the length of time they were enjoyed, to the lowness of rent, to benefits received from landlord on their account.*

* In connection with the compensation due to leaseholders, it may

5. Unless for holdings under Customs, or where tenant does not avail of them, all improvements are presumed to have been made by tenant, until the contrary is proved. EXCEPT where the improvements were made before the holding was purchased by landlord or his predecessors—where the tenant had a lease—where they were

Presumption in respect of improvements.

be of interest to refer to the fact (mentioned at p. 166 n.), that leases did not debar their holders from availing themselves of the "Ulster Custom," on their expiration. In the Acts of Settlement and Explanation of Charles II (14 & 15 Car. II.), there is mention of compensation to be given to tenants for improvements made, under leases, on their dispossession. These tenants were the Cromwellians, whose titles were not recognized, who were compelled to restore their usurped farms to the previous owners, and who yet obtained compensation for improvements, and reprisals for disturbance in occupancy. The more liberally this clause is construed the greater will be the landlord's security against waste, at one time in Ireland the tenant's principal means of recouping himself for his outlay.

The clause which prohibits the tilling of pasture lands without the landlord's written consent is, in principle, unfair and erroneous. It is unfair, because no similar clause protects tillage lands from being converted into grazing grounds. It is wrong in principle, because the State should not interfere with a trade except to guard itself from possible injury. Here it cannot be shown that the protection of pastures saves the State from any danger, or protects it from any loss. The contrary is the case: the conversion of pastures into tillage multiplies the number of its defenders, and increases the amount of its revenue. Hence statutes were anciently passed to restrict the extent of land placed under grazing. The State, now at the least, should show an equal amount of favour to tillage as to pasturage. If it be objected that pasture acquires a value in proportion to age, it may be answered that the landlord has the power of making deductions for damages, which should cover any loss proved to have been sustained by the growing of any other crops in the place of grass. The contract-clauses were sufficient of themselves to have regulated this matter, without any invidious interference with agriculture. It is not, however, an innovation. Ancient precedent may be adduced to countenance it: but, on the other hand, when precedents protecting pasture were re-

made twenty years or more before the Act—where the holding is rated as worth over £100 a year—where the Court shall think proper to require proof from tenant, if on any estate it was shown to have been the landlord's practice to make improvements—where the Court is reasonably satisfied, from all circumstances, the improvements were not made by tenant or

membered, the precedents under which it was limited in extent should not have been ignored.

The clause which forbids the tenant to cut timber, except timber planted or registered by him or his predecessors, is in part unnecessary and inexpedient. Its probable object is to secure for the landlord a royalty on the timber cut. There is no more reason to grant him this for a timber crop than for any other crop. If, on the other hand, it be intended to give the landlord a veto upon cutting down what might shelter or adorn the landscape, this object might be obtained otherwise than by a form which obstructs the tenant who should desire to plant, and make merchandise of a certain kind of crop. Trees already planted, and which it is desired should be allowed to continue to grow for useful or ornamental purposes, might be protected, but no necessity should be laid on the cultivator to register any crop under penalty of being hindered from reaping it, unless for the purposes of State taxation.

Thus it would be allowable to place the cultivation of tobacco under such restrictions, and as, under present circumstances, the tax might without much difficulty be collected, it might even be commendable to abolish the prohibitory law. But so long as agriculturists neglect the cultivation of hemp for which there is a market in every sea-port, there is no grievance in the prohibition of the tobacco-culture.

The clause as to timber in the Act is taken from old lease clauses, which have defeated their own object. Few tenants care to trouble themselves to plant trees at all, on account of the necessity of registering them—whilst it is certain that, gradually, a great number would be planted, if the commerce in those of the tenant's own planting were left free. It is not the interest of the State to enact an impediment. The damages clause would, probably, amply secure the landlord against any risk of deterioration of fruitful soil; still, a further guarantee might be given, by restricting the tenant's right of planting and cutting to waste plots and banks.

his predecessors. If it be proved, for any estate, that it was the landlord's practice to assist in making improvements, the presumption shall be so modified.

6. Any landlord or tenant, desiring to preserve evidence of improvements made by self or predecessors, before or since the Act, may file a schedule in the Landed Estates Court specifying them. Written notice and copy of schedule must first be given by landlord to tenant, or by tenant to landlord, and the person to whom notice is given, can dispute the claim and apply to the Civil Bill Court to decide the matter in difference.

7. Where a tenant does not claim or has not obtained compensation under sections 1, 2, 3 of Act, and it is proved to the Court that he or his predecessors on coming into his holding gave money or money's worth on that account with express or implied consent of landlord, the Court shall award him, on leaving, such compensation as it thinks just. EXCEPTIONS:—But the tenant shall not be so entitled, if he got leave to sell his interest to another incoming tenant on such terms as Court may think reasonable, and refused or neglected it—where the money or money's worth was given in whole or part on account of improvements, the tenant cannot put in double claim for them. In this and improvement section deductions are to be made for damages, rent, and taxes. This section does not apply where such money or money's worth was paid during existence of a lease made before Act.

8. Where a holding is under Ulster Custom, or such usage as already described, if the custom or usage extends to away-going crops, the compensation payable for these shall be dealt with according to custom or usage. Tenants of other holdings shall, if there be no written agreement to the contrary, be entitled to all his away-going crops or their value, at the landlord's choice.*

* It was proved (ch. VI.) that this custom of the under-tenants was officially recognized during the proceedings of the Transplantation of

9. Ejectment for non-payment of rent—for breach of condition against assignment, sub-letting, bankruptcy, Limitations as to disturbance in holding. or insolvency, shall not be deemed a disturbance of tenant by his landlord. A tenant so ejected has the same position (and claims) as a person quitting voluntarily. **EXCEPTIONS:**—The Court may treat an ejectment for non-payment of rent as a disturbance, in the case of a tenant claiming compensation (after being ejected for non-payment) on account of a tenancy existing at the time of Act passing and continuing to exist without alteration of rent to the end, if the arrear of rent did not accrue within the three previous years—and if any earlier arrear remained due at the time of commencing the ejectment—or if in case of any such tenancy of a holding (not exceeding £15 yearly rent), the Court shall certify that the non-payment of rent causing the eviction has arisen from the rent being an exorbitant rent. No tenant who has given notice of surrender and afterwards refuses to give up possession in pursuance of it, shall be entitled to get compensation under section 3, though evicted.

10. Any landlord may, after six months' written notice, Land resumed for labourers' cottages. resume possession from a yearly tenant of so much land [not exceeding altogether one-twenty-fifth part of the holding], as he may really require for erecting one or more labourers' cottages, with or without gardens. Such resumption (unless the Court think it unreasonable) shall not be deemed a disturbance of tenant—but tenant may claim compensation for improvements and a proportionate abatement of rent.*

Cromwell. It is not creditable to the administrators of law that the Legislature should have been obliged, owing to encroachments, to confirm it by statute.

* It is to be hoped that landlords will exercise to the utmost this right in favour of a highly meritorious class, which has been greatly neglected and lowered in position. There is a striking and most disagreeable contrast between the "cottagers" of the Plantations (pp. 33 and 52n), with their little farms, held in (copyhold) "fee," or "for

11. A tenant is deemed to have derived his holding from preceding tenant, if he has paid him money or money's worth on its account, or taken it of him by assignment or operation of law; and where a succession of tenants have derived title each from the other, the earlier shall be deemed the predecessor of the later, and the later the successor of the earlier.*

Derivative
title of tenant.

12. The tenant of a (non-custom) holding, the aggregate of whose holding or holdings is rated at not less than £50 annual value, is bound by any contract against compensation claims he agrees to.†

Contract bind-
ing against
compensation.

13. Where a holding (for which compensation is claimed, section 3) under a tenancy from year to year, existing at the time of Act passing, is assigned without the landlord's consent, and if he refuses to accept the assignee as tenant, no compensation is payable by landlord under said section (3) in any of the following cases: (1.) Where tenant's rent was so much in arrear at time of assignment, as to render him liable to eviction. (2.) Where such assignment, without landlord's consent or approval, is

Restriction as
to compensa-
tion in certain
assignment
cases.

years," and the poor landless labourers who in some districts are driven into towns, and must trudge several miles to and from their daily labour. It has been shown that in the reigns of Charles II. and of Anne, provision was made by statute that labourers should possess small plots of land. The commencement of the present century marked their last period of general well-being as cotters. About that time Burns could, in "The Cotter's Saturday Night," praise the class as a source of Scotland's greatness. They have suffered greatly since; though the Devon Commission recommended their case for legislation.

* This section is important in connection with the question of the vitality of the Ulster and other customs. It does not stipulate that the tenant shall have publicly paid his predecessor; if he have done so privately (notwithstanding any "estate-sale"), he derives from him, and is a tenant under the Custom.

† This is a reactionary concession, whose operation should have been postponed for twenty years. It may prove directly and indirectly injurious.

contrary to or not warranted by the practice prevalent on the estate. (3.) Where the court considers the landlord's refusal reasonable.*

EXCEPTIONS :—This does not make invalid the assignment by will to husband or wife, or to any *one* child or grandchild, or to any one brother or sister, or to any one child or grandchild of a brother or sister of the tenant, or the devolution of the tenancy by operation of the law upon intestacy or marriage.

14. Where it is proved to the court that a yearly tenant (whose tenancy existed at time of Act passing), is evicted because of his persistent exercise of any right not necessary to the due cultivation of his holding, and from which he is debarred by express or implied agreement, such eviction is not to be deemed a disturbance. Again, where such a tenant is evicted, it is not deemed a disturbance if he had unreasonably refused to allow landlord or his agents (who are bound to make amends for any injury done) to enter his holding for any of these purposes : mining or taking minerals ; quarrying, or taking stone, marble, gravel, sand, or slate ; cutting or taking timber or turf ; opening or making roads, drains, and water courses ; viewing or examining state of holding, building, and improvements ; hunting, shooting, fishing, or taking game or fish. If, however, it be shown the landlord has persisted in evicting, after the tenant withdraws his refusal, such eviction is deemed a disturbance.†

15. No compensation is payable in respect of (1) any demesne land, or any holding termed "town parks" near city or town, which bears an additional value as

* The exceptions to the section are a recognition of the customary right of even the yearly tenant to dispose of his estate by will. A copy of such a will is given by Mr. Campbell (*The Irish Land*, p. 8), to whose thoughtful work much credit is due.

† The first clause in this section is loosely worded. It would seem to authorize the limitation of the tenant's civil rights. The clause is a reactionary concession which, because it would comprise too much, must be interpreted as signifying nothing.

accommodation land over the ordinary letting value of farmland, and occupied by a person living in city, town, or suburbs; or any holding mainly or wholly let for pasture rated at not less than £50 yearly value; or any such pasture-holding on which the tenant does not reside, unless it adjoin or is ordinarily used with the holding on which he resides (his claims under sections 4, 5, and 7, are preserved); (2) No compensation for a holding occupied by tenant as a labourer or hired servant; (3) Nor for any letting in conacre or for the purpose of agistment or temporary depasturage; (4) Nor for any holding expressly let by document for temporary convenience or necessity of landlord or tenant, if the letting is ended on account of this having ended; (5) Nor for any cottage allotment not exceeding a quarter of an acre.

Proceedings in respect of claims are dealt with by sections 16, 17, 18, 19, 20, and 21. By section 21, the tenant to whom compensation is decreed is entitled to remain in his holding until the sum be paid or deposited.

The Court to award compensation, (the Civil Bill Court of the county, or the Court of Arbitration constituted as in the act,) and its jurisdiction, powers, etc., are described in sections 22, 23, 24, 25.

The powers of limited owners to make agreements, grant leases, etc., as extended by the act, are defined in sections 26, 27, 28, 29, 30, 31.

PART II.—SALE OF LAND TO TENANTS.

32. Subject to certain restrictions, the landlord or tenant of any holding in Ireland may agree for the sale of holding to tenant, at a price fixed between them; and then apply either jointly or separately (with assent of the other), to the Landed Estates Court for the sale to the tenant.

33. The landlord to be able to sell must be, in the case of freehold land, owner in fee-simple or fee-farm, or capable of appointing or disposing of the fee, whether subject or not to incumbrances; and, in the case of

Agreement and application to court.

Landlords who are empowered to sell.

leasehold land, must be capable of disposing of the whole interest in the lease, whether subject or not to incumbrances. No holding of leasehold tenure can be sold unless the lease under which the landlord is possessed of the land is a lease for lives or years renewable for ever, or a lease for a term of years of which not less than sixty are unexpired at the time of sale—nor can he sell if there be a prohibition in his lease against alienation unless it be determined or waived.

A landlord who is a “tenant for life” as defined in the Act, can sell—as can any other limited owner, *i.e.*, body corporate, trustees for charities, commissioners or trustees for collegiate or other public purposes, having an estate in fee-simple or fee-farm or such leasehold as mentioned.

34. The court may require a deposit from the landlord as security for costs, and then proceed to make enquiries and carrying sale into effect.

35. On sale the purchasing tenant acquires an estate in fee-simple, fee-farm, or leasehold, similar to the selling landlord's, free from other estates, incumbrances, and interests.

36. These charges and interests shall not be reckoned incumbrances in this sense: (1) Quit rents and retained charges in lieu of tithes; (2) Rights of common, of way, water-courses, and rights of water and other easements; (3) Heriots, manorial rights, and franchises; (4) Charges for drainage or other charges created by Act of Parliament and specified in conveyance. Any holding sold shall be deemed subject to such of these as may be existing on it, unless the contrary be expressed.

37. The court shall arrange the distribution of sale-money, having regard to those who have claims on it; 38 and 39 refer to costs; 40 and 41 deal with general powers of court in conduct of sales.

PART III.—ADVANCES OF MONEY TO LANDLORDS AND
TENANTS.*

42. When a tenant is quitting his holding, but has not been disturbed by his landlord, the Board of Public Works may, (on the landlord's application), advance the compensation-money, and charge the holding with an annuity at five per cent. on such advance, payable within thirty-five years.

43. The Board may make advances to landlord for reclamation of waste land, on due security, where landlord has contracted for sale of waste land, the Board may advance, on security of vendor and purchaser, such sums as they think fit, not exceeding half the purchase-money, and chargeable as in 42.

44. To any tenant for the purpose of purchasing his holding, the Board may advance any sum not exceeding two-thirds of its price : such holding shall then be charged with an annuity of five per cent. on the sum advanced, limited in favor of the Board, and repayable in the term of thirty-five years. No purchaser or person deriving title from him, shall, without consent of the Board, alienate, assign, sub-divide, or sub-let, while any part of annuity remains unpaid ; otherwise the part so treated shall be forfeited to the Board for public purposes.

45. Where an estate is ordered for sale in the Landed Estates Court, any tenant on it wishing to purchase his holding may apply to the Board for a sum not exceeding two-thirds of its purchase-money. Where such tenant has been declared purchaser of his holding and paid one-third or more of the purchase-money,

* Part III.—The intention of this whole part is so admirable and its utility so evident, that praise is superfluous. It is to be hoped that the Board of Works, as well as the Estates Court, will feel bound to afford every requisite facility in carrying out its object. If this plan be not trammelled, the nation may soon be leavened by a class of cultivators unsurpassed in position by any recorded in its history.

the Board may pay the balance and charge it with an annuity, as in section 44, under same conditions.

46. The Landed Estates Court is directed to afford facilities to occupying tenants desirous of purchasing their holdings.

47. Where a landlord will agree to sell all (but not part as before) of his estate to his tenants, and tenants of holdings forming four-fifths the value of estate are willing to purchase their holdings, and other purchasers are found willing to buy the residue and pay one-half its purchase-money, such sale may be made as if all the purchasers were tenants. The Board may advance to the residue-purchasers one-half their purchase-money, severally or collectively, on security of the residue. The land bought thus is charged with an annuity as before.

48. The priority of the annuity charge over other charges, with certain exceptions, and its mode of half-yearly payment, are stated and described. 49. It is recoverable in the same manner as rent-charges in lieu of tithes. 50. No arrears of annuity due more than two years, are recoverable: it is the duty of the owner for the time being in possession or receipt of rents and profits, to prevent such arrears arising: if he does not, and the owner next entitled to possession pay such arrears, the amount shall be a debt due from former to latter. 51. The person liable to pay the annuities may redeem it or any unexpired portion by paying the Board its value, calculated according to a table annexed to Act.

52. The Board is empowered to pay to a seller, on his application, an annuity at three and a-half per cent. in lieu of a lump sum, or to commute an annuity for such a mode of payment, and to compromise contingent or doubtful claims. Sections 53, 54, 55, 56, deal with the relations and arrangements of Board, Treasury, Consolidated Fund, and Civil Bill Court.

PART IV.—SUPPLEMENTAL PROVISIONS.

57. Every Notice to Quit of a tenant, as defined, shall bear
Duty on a half-crown stamp as duty.
Notice to Quit.

58. No such notice is valid unless duly signed by landlord
Restrictions or his authorized agent, and stamped, when served;
on Notices to a Notice to Quit shall not, in the case of a tenant
Quit. from year to year, take effect until after the expiration of a period of not less than six calendar months from the date of service. In the absence of agreement to the contrary, such period of six months must terminate on the last gale day of the calendar year. Any person serving a Notice to Quit, not in conformity with this section, may be fined in forty shillings. Where due service of a notice is proved it shall be held to be duly stamped until the contrary is proved.*

* This section has the merit of abating the invidious change made in the post-“emancipation” period for the speedy eviction of tenants (ch. x.). The Gladstone government desired to extend the time of grace even to twelve months; but unfortunately they had to give way upon this as upon some other points. To any one who dispassionately considers the position of an agricultural tenant, it must be obvious that a year's notice is the least space he should claim in order that he might not be at a disadvantage in seeking for another farm. It is not so easy to perceive why this concession, which any fair landlord would grant, should have been opposed, except through effete prejudice. There might have been a reason to allege, had the tenant's power of “scourging” the soil remained as before, but that is checked by the operation of the section which allows deductions for damages.

When the distrust and prejudices to which the previous state of things gave rise, shall have perished or grown feeblér, it is to be expected that the majority of landlords will be ready to sanction a revision of this section, to which only a few men of extreme opinions could cling. It is to be hoped that they will be prepared and willing to revive, in a true conservative spirit, the old customs even further, and to sanction by statute what in practice they may authorize.

Of old (in the year 1298), at the period of the first eviction in the Pale (p. 16), the tenant, holding under a certain rent, could not be ejected

59. Where a tenant dies, leaving no legal personal representative available, the Civil Bill Court may appoint an administrator, limited to the purposes of the Act.

60. The order of proceeding in the case of married women is described. 61. Provision is made for other persons under

except for non-payment of rent, after the lapse of two years. If that were now the case, the relative positions of lord and tenant would not be quite restored ; for at that time the lord could not sell his estate unless the tenants consented or attorned. This tenant's right was not abolished until Anne's reign (Stat. 4 & 5 Anne, c. 16, s. 9). Again, at that time the lord or upper-tenant was subject to heavy charges and fines, exacted by the royal or head-landlord, from which exactions and uncertain mulcts he has been freed since the Restoration. But the "tenant"-class, at present, do not grudge to the "landlord" class such acquisitions, and would be content with less than their predecessors. They would be satisfied to concede even larger ejectment-powers, adding to the right of ejectment for non-payment that of ejectment for non-occupancy, proved waste, or unauthorized sub-division. An arrangement which would secure an equitable, a certain, if not a fixed render or rent, could be planned on the precedents of the Copyhold Commutation Acts, passed in the present reign. Then the rent was made variable with the price of grain, or fixed, as agreed. At Ralahine, where an enterprising landlord established with success a system of co-operative agriculture, it was found best to take the average of three years' market-price of six different articles of produce (wheat, barley, oats, butter, pork, beef) as a fixed rent standard. (Pare, *Co-operative Agriculture*, c. vii.). Under present and future conditions of society in Ireland, a general consent to such reforms has become possible.

In ancient times, the competition between lords for vassals made it needful for them to offer freeholds to tenants on easy terms. There is now growing up a competition (which landlords will yet recognise) between the land-system existing in Ireland and that in America. To retain the best and most enterprising tenants it will be requisite for the landlords to offer adequate tenures. When the lords gave their tenants secure tenures at certain and equitable rents, agrarian outrages were unheard of ; each class served, respected, and protected the other. The landlord who acts like his predecessors can still, like them, behold in the tenantry his "defensible men."

disability. Sections 62, 63, 64 relate to technical proceedings of the Civil Bill Court.

PART V.—MISCELLANEOUS: GRAND-JURY CESS, TENANT-AT-WILL.

65. Any person, under any tenancy created after the Act passing, who becomes occupier of any premises liable to Grand-Jury Cess, may deduct from his rent one-half of the sum he paid as Grand-Jury Cess. Any person receiving rent in respect of premises liable to cess, and paying a rent for same, shall, if the rent is received and paid under contracts made after Act passing, be entitled to deduct from the rent so paid by him a sum proportionate to the amount of cess deducted from the rent received by him.

66. Where the nett annual value, as rated, of premises estimated in any county of a city, county of a town or barony (occupied under a tenancy created after Act passing), does not exceed £4, the immediate lessor or lessors shall pay the cess. If the cess be not paid within four months after it has become due, the cess-collector may give written notice to the occupier to pay, and after one month, may recover it from him or any subsequent occupier. The occupier can deduct the whole cess paid from the rent, or recover it by Civil Bill, if rent sufficient to cover it do not become due.

67. The last two sections do not apply to county cess levied as compensation for malicious injury under section 106 of 6 and 7 George IV. c. 116, or the "Peace Preservation Acts" of 1856, 1870, or acts amending or continuing same, now in force.*

68. No person who, after Act passing, takes land at an acreable rent, shall be liable to pay rent for the public roads intersecting it, unless there be an agreement to the contrary.

* So long as the landlord has the power of raising his rent, provisions like those contained in this section must prove, in general, delusive.

69. When any tenancy-at-will, or less than a tenancy from year to year, is created by a landlord after the Act passing, the tenant on quitting shall be entitled to notice to quit and compensation, as if he had been a tenant from year to year: provided that this section shall not apply to any letting or contract for the letting of land made and entered into *bonâ fide*, for the temporary convenience, or to meet a temporary necessity either of the landlord or tenant.

DEFINITIONS. Sections 70, 71, 72, 73 define the terms used, and confine the Act to Ireland.

70. The term "improvements" shall mean :

(1.) Any work which being executed adds to the letting value of the holding, and is suitable to it.

(2.) Tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.

71. The Act only applies to a holding which is agricultural or pastoral, or partly agricultural and partly pastoral; and the term "holding" includes all such land held by the same tenant of the same landlord, and under the same contract of tenancy.

The Schedule accompanying the Act, relates to the appointment of powers and modes of operation of arbitrators, and contains a table for the redemption of annuities or rent charges.



A P P E N D I X .

CHAPTER I. LAND-CLASSES, ETC.

FROM the time of Cambrensis, many customs found in Ireland have been censured as peculiarities setting its people apart from other nations: nevertheless, analogous customs were in fact common to other peoples. The censure was due to the ignorance of the censor. It may be briefly pointed out here that the grades of the Irish land-classes were paralleled on the Continent. Cæsar remarked that the principal classes amongst the Gauls were the druids and the nobles. The hereditary or elective chiefs were nobles. The common people were much inferior in position; of themselves they ventured nothing. But they had political rights, and a voice in electing the chiefs. Beneath them was the slave-class, then generally found. Usually captives and criminals (when spared from sacrifice) formed this class, but occasionally freemen, loaded with debt and tributes, or oppressed by the strong, gave themselves up to the nobles in servitude.* These resembled the *fuiders* (p. 9). The general descriptions of Cæsar, doubtless, cover many more resemblances of detail. Augustus, in his attempt to disintegrate the Gaulish power, not only forbade the meetings of clan-

* Cæsar, *De Bello Gallico*. lib. vi., c. 11-20.

councils, but, designating as "*glebæ adscripti*" the labouring classes, established villenage on a greatly enlarged basis. The insurrection of the peasant Bagaudes, in the fourth century, was doubtless due not merely to immediate oppression and misery, but also to a resolution to vindicate ancient rights. The conspiracy of the *Commune*, with its organized "conventicles" or circles, arose from the same causes in Normandy, at the close of the tenth century.

The characteristics of the German social system, as told by Tacitus,* are identical on numerous points with those of the Irish. Kings were chosen from certain families;† there were nobles, men of free birth, freed-men, and slaves. Like the Gauls, some free Germans

* Tacitus, *De Situ, Moribus et Populis Germaniæ* : c. 16-26.

† The elective and hereditary principles were combined : the manner in which that was accomplished in Ireland, is described in this extract : "Que qu'aunt ascun person, morust seisie des ascuns Castles, Manors, Terres ou Tenements del Nature et Tenure [de Tanistry] avantdit, que donques mesme les Castles, Mannors, Terres et Tenements doent descendre, et de tout temps, avant dit ont use de descendre, *Seniori et dignissimo viro Sanguinis et Cognominis* de tiel person que issint morust seisie. . . . Et certes, cest Custome que done la terre al plus eigne et plus digne home del sang et surnosme del cesty que morust seisie, est fort reasonable en cest Realme, pur ceo que il poet mieux manure la terre, et defender ceo, que un enfant ou feme. . . . Et sicome cest Custome nest voide pur fault de Reason, issint nest voide pur fault de Certainty. Car la terre descendra al *plus eigne et plus digne*. Le *plus eigne* poet estre certainement conus ; mes le *plus digne* semble destre incertain, car que serra Judge de ceo ? certes la Ley, que est tout foits certaine et infallible en sa Judgement. Et la Ley dirra que le plus eigne est le plus digne, cibien in cest Case come en auter cases de cest Nature." Davis, *Reports*. Le Case de Tanistry.

gave themselves into slavery : with the latter this was due to the passion for gambling, which caused them to stake even their liberty. Spenser describes some few of the Irish, whom he names *Carrowes*, and describes as passionately addicted to the same vice. The slave-class amongst the Germans was constituted as in Gaul and Ireland. The slave had a separate habitation, and his own establishment to manage. His master regarded him as an agrarian dependent, and obliged him to furnish certain quantities of grain, cattle, and wearing apparel. He was represented in Ireland by the base *fuidir* furnishing food-tribute. The freedmen or *lidi* were not of much higher consideration than actual slaves, and occupied, apparently, a similar position to that of the Irish base tenant, or *daer ceile*.

Charlemagne sought to quench permanently the Saxons by converting their chiefs into feudal lords : by augmenting the power of the chiefs he hoped to divide them from the people. The free land-holders were de-graded as their lords usurped despotic power over them. Many were thus reduced to a servile state. The son or sons of a serf on his father's death had to sue permission before they could succeed to their inheritance.* Though Louis the Pious revoked this ordinance, great political and social wrongs remained to excite intense discontent. The freeholders

* Gfrörer, *Geschichte der ost und west Fränkischen Carlinger*, vol. i., p. 27.

were impoverished and diminished, the cultivators were either wholly bondmen, or else burthened with duty-work and rents. The de-grading policy and its results resembled what has been detailed in the foregoing history of Irish Tenures. Insurrections in vindication of ancient rights ensued in the case of the Saxon as of the Gaul or Celt. In the middle of the ninth century, the Saxon land-classes were still the nobles or edelinge, the free-born or frilinge, and the lazze (lidi, liti, lete) or "unfree," in which class the serfs and (probably) the slaves were included; but there had been no recent captures. Nithard relates that Lothaire, when hard beset by his brother kings, sent messengers into Saxony "frilingis lazzibusque" to the frilingi or freeholders, and to the lazzi or unfree "quorum infinita multitudo est." He promised that they should have and enjoy the same law as their forefathers if they joined with him. They most eagerly agreed, denominated themselves *Stellinga*, and gathering together, expelled almost all their feudalized "lords," and then, as of old, lived according to their own laws: "et in unum globati, dominis e regno pene pulsus, more antiquo, qua quisque volebat lege vivebat." *

The sagas of the Northmen give us an intimate view of the condition of the people.† The slaves were

* Nithard, *Historia*, lib. iv., c. 2. (Script. rer. Gallic. et Fr. v., vii.), p. 29.

† Laing, *The Heimskringla*, v. i., c. iii.; Dasent, *The Saga of Burnt Njal*, passim.

denominated "Thraells:" they were prisoners captured at sea, or carried off from foreign lands. If not ransomed they were bought and sold at the slave markets. They could be killed without mulct on the slayer, as was the general rule before Christianity prevailed. The Northmen, however, treated their slaves comparatively well. They had to perform certain duties, agricultural and other, but were enabled by the profits of surplus work to redeem themselves in one, two, or three years, under some masters. If they had not political privileges, yet, being without the law, they escaped some of its prohibitions. Thus in the reign of King Olaf the Saint, in the first half of the eleventh century, the thralls of a peasant-proprietor were allowed to export a cargo of meal and malt to Halogaland, which their master could not do. The king had prohibited exportation of food from South Norway, fearing a scarcity. "The slaves," said their proprietor, Erling, to Asbiorn, who sought the supplies, "are not bound by the law and country regulations like other men." Evidently, adds Laing, because they were not parties like other men to the making of the law in the Thing (or parliament). In Ireland the slaves and base persons had a like position. They had no political rights. They could not levy a distress. No bond-labourer, no bond-fuidir, no vagrant, shepherd, cowherd, or cart-boy was distrained in a decision about debts due, or for the regulations of a territory.* He was taken in person, if at all,

* *Ancient Laws and Institutes of Ireland*, vol. i., pp. 91-105.

because he was a chattel. But yet they were allowed to hold property; thus, it is written in a later gloss on the ancient law: "These persons are themselves liable to be taken in distress, according to the book, *i.e.*, on account of their insignificance, and the man to whom debts are due has his choice whether he will take themselves in distress *or their cattle*."* If taken in distress for a debt less than their value there was a fine due to them. In Norway, as we have seen elsewhere, the slaves who had obtained their freedom belonged to a class distinct between the peasant-proprietors and the slaves—a "class of unfree men." They were not udal-born to land; were not entitled to appear and deliberate in the Thinga. They were liable to general levies with the free men to repel invasions, whilst the thralls could only be levied by their masters. This class included the cottars or housemen, paying a rent in work, and the house-carles or free-born indoor men, "and workpeople, labourers, fishermen, tradesmen, and others about towns and farms or rural townships, who although personally free and free-born, not slaves, were unfree in respect of the rights possessed by the class of bonders" (peasant-proprietors) "land-owners, or peasants in the Things." They had protection and civil rights, but neither elective nor parliamentary franchise. The independent bonders (*recte* sing. bondi, pl. bøender) enjoyed

* *Ancient Laws and Institutes of Ireland*, vol. i., p. 101.

land and legislative rights, and divided their property equally among their sons. The right to the crown of Norway was udal-born in a certain family, and the sons had equal rights. Sir John Davis complained that illegitimacy did not exclude heirs of land in Ireland: "In Norway," says Mr. Laing, "we find all the children, illegitimate as well as legitimate, esteemed equal in udal-born right even to the throne itself." In Wales the same custom of inheritance existed until modified by the Statute of Rutland (12 Edw. I.), which excluded bastards from heirship, but sanctioned the usual method of partition of land.

With respect to the Roman Empire, the existence in it of patrician, plebeian, freedman, and slave classes is well known. The public is less familiar with their relations to the land; a few remarks to indicate some salient points will therefore not be superfluous. About the commencement of the Christian era, we find Roman writers deploring, as long past, the time when small farms were the rule, when generals guided the plough, and when the State, sound within, was magnified by the agricultural and military services of a peasant-proprietary. When Columella wrote his treatise on husbandry (*De Re Rustica*) connection with the land was no longer thought honourable. Absenteeism prevailed, and bailiffs or agents replaced the lords. The latter no longer contented themselves, like Cincinnatus, with a few acres. Nobles had engrossed vast tracts of territory; their estates were so

large that they were unable to go round them. Instead of tilling them properly, they gave them up as pasture for trampling herds and flocks. Wild animals abounded. Fettered slaves, or citizens, who had become bondmen through indebtedness, were employed as cultivators.* Besides this general statement, there are details given which reveal a condition of things essentially similar to what has been shown as anciently existing in these countries.

The land-owner let one portion of his land to freemen to farm, another portion he reserved (as a *demesne*) to be cultivated by his own slaves.† *Columella* counsels him to treat his tenants with gentleness, and to be less anxious about his rent than that they should do their work well. This was the most profitable thing, after all. Nor should the landlord exact his rights rigorously; he should not, for instance, insist on having his rent on the very day it fell due. He ought not to demand wood-supplies, and other additional duties beyond his rent.‡ Neither, indeed, should he exact all the law allowed, knowing that the rigour of the law was the greatest oppression.

His slaves were of two kinds. The lowest class were malefactors who worked in fetters, and were imprisoned at night in the *ergastulum*, an underground dungeon into which light was admitted by

* *Columella, De Re Rustica*, l. i. c. 3.

† *Ibid.*, l. i. c. 7.

‡ For the exaction of such duty-work in Ireland, see chap. ix.

small apertures placed out of reach. As the criminals had sometimes quicker minds than the simple plodding rustic, they were thought well adapted for vineyard work. The better kind of slaves had cells instead of prisons, and were not fettered.* Some were raised to positions of trust and became bailiffs: even if a bailiff were illiterate, provided he had a good memory, it stood not against him. In one point of view it was an advantage, for he could not falsify the accounts so readily. A slave woman was given him as mate and housekeeper. Slaves might be manumitted at their master's pleasure, but there was a general rule applied to female slaves, which, if carried out, must have secured the emancipation of many mothers. When a woman-slave had borne three sons, she was, according to Columella, exempted from labour; when more than three, she obtained her freedom.

Slaves in the Roman Empire, as usually happened elsewhere, yielded no military service;† it was an obvious measure of prudence to keep from the oppressed a knowledge of the use of arms and art of war.

* Columella, *De Re Rustica*, l. i. c. 3.

† Virgil, *Æneis*, l. ix., v. 547.

II.

THE SLAVE-CLASS.—DEVELOPMENT OF SECURITY.

THE slave-class, being the class chiefly concerned in land-culture, has a special interest. Its peculiar position and relations with other classes have been stated. Mention has also been made of enfranchisement customs for particular countries. It remains now to point out how one great cause operating generally raised this agricultural class from bondage to liberty.

That cause was Christianity. As its morning rays fell upon the nations, they first dispelled the darker clouds of slavery, and then, as the light prevailed, bondage passed away. This happened more or less speedily in different localities, as mountains may be seen illuminated with sunshine while the valleys at their feet lie still in shade.

The language of the *Corpus Juris Civilis* of the christian Emperor Justinian, even where it specifies the restrictions on liberty, reveals how greatly christian teaching had ameliorated the condition of slaves.

Men became slaves according to the Institutes, in three ways. Some were captives whom the generals did not kill, preferring to preserve them (*servare*) in order to have them sold. Hence the name *servi*, slaves, is said to come from *servare*, to preserve; they were also called *mancipia*, because, *manu capiuntur*, they were

seized from foes by the strong hand. Others were born of slave parents. Others again, pressed by some necessity, desiring to have a secure maintenance or to avoid military service, sold themselves into slavery. This power of de-gradation; used among the Germans, Gauls, &c., was legally possessed by Roman freemen when they had passed the age of twenty.*

Masters had formerly exercised the right of life and death over their slaves, but this was no longer permitted, except for some extraordinary cause. If now a master harshly used them, it was ordered that his slaves should be sold from him.† There were now, also, many outlets to liberty. Thus, though the father were a slave, if the mother were free, her offspring was also free.‡ Even if she had conceived when free and gave birth to her child in slavery, this child was free. Such regulations reversed the pagan presumption.

When manumitted, the slaves became freedmen. The free-born man (*ingenuus*) who had sold himself into slavery, did not resume his first condition when enfranchised, but became merely a freedman (*libertinus*).§ Of freedmen there had been anciently but one kind, more recently there were three kinds. They were given either perfect freedom, as Roman citizens, imperfect freedom as Latin citizens, or a more incomplete freedom as *Dedititii* (surrendered). Justinian

* Justinian, *Inst.* l. i. t. 3; v. q. *Digesta seu Pandecta*, l. i. t. 5.

† *Inst.* i. 8.

‡ *Inst.* i. 4.

§ *Digest.* i. 5, s. xxi.

now decreed that all freedmen should enjoy Roman citizenship.* Yet, although freedmen in Rome notoriously rose to high posts, it was considered they should show their gratitude to the master who enfranchised them, so one-half of the property of the freedman, on his death, passed to his patron.†

It sometimes happened that slaves were admitted to the priesthood, without the consent of their masters, and as this was calculated to enfranchise them, it was ordered that consent should first be obtained.‡

The laws that were enacted for the especial regulation of the condition of the rural slaves have a particular interest. One of them, at least, of itself most important, has an additional value from the light it throws on the origin of the tenure of privileged or villein socage and copyholding in England, which hitherto has been involved in great obscurity. Neither Bracton, Blackstone, nor Stephen has elucidated this point.§ Bracton merely dates villein socage from

* *Inst.* i. 5.

† *Ibid.* iii. 7.

‡ *Codex*, i. 3, s. xxxvii; v. q. *Novella*, cxxiii. c. 17.

§ "Pure villenage is where a man holds upon terms of doing whatsoever is commanded of him. . . . There is also another kind of villenage holden of the king, from the time of the Conquest, which is called villein socage (*villanum socagium*) and which is villenage but of a privileged sort. Such tenants of the king's demesnes have the privilege that they cannot be removed from the land while they do the service due; and these villein-socmen are properly called *gleba adscriptitii*. They perform villein service but such as are certain and determined."—Bracton *apud* Blackstone, Stephen's edition, B. ii., pt. i., c. 2.

After describing the tenure by knight's service, free but uncertain

the Conquest; Blackstone describes copyhold security as growing up "in process of time." It will, however, be seen from the following law of Anastasius that thirteen centuries ago it was made the rule over almost the whole of Christendom that the slave or pure villen should enjoy security and freedom, after a definite period of thirty years, spent in labouring the land.

*Αὐτοκράτωρ Ἀναστάσιος. τῶν γεωργῶν οἱ μὲν ἐναπόγραφοι εἰσι, καὶ τὰ τοῦτων πεκούλια τοῖς δεσπότης ἀνήκει, οἱ δὲ χρόνῳ τῆς τριακονταετίας μισθωτοὶ γίνονται, ἑλεύθεροι μένοντες μετὰ τῶν πραγμάτων αὐτῶν, καὶ οὗτοι δὲ ἀναγκάζονται, καὶ τὴν γῆν γεωρεῖν, καὶ το τέλος παρέχειν.**

Whether this edict merely legalized an old custom or established a new rule, its influence on the fortunes of the cultivator class was vast. That influence is not to be measured by the extent of the imperial power of Anastasius I., nor even by that of his

in amount of render; by socage, free and certain; by privileged villenage or villen socage; and pure villenage; it is stated that the last two merged into copyhold tenure: "Villeins," seizing certain opportunities, Blackstone proceeds, "in process of time strengthened the tenure of their estates to that degree, that they came to have in them an interest in many places as good, in others better than, their lords." This, he thinks, was largely owing to the "good nature and benevolence of their lords."

* *Codex*, xi. 47, s. xix. Thus also given: in Latin "Anastasius Imperator. Agricolarum alii quidem sunt adscriptitii, et eorum peculia dominis competunt, alii vero tempore annorum triginta coloni fiunt liberi manentes cum rebus suis, et ii coguntur et terram colere et canonem præstare." Another reading has "cum liberis suis," instead of "cum rebus suis."

greater successor, Justinian I. The principle it enunciated became part of the public opinion of Christendom, and as Christianity grew powerful in the west, this principle became incorporated in the laws or in the customs of European nations. A mode of advancing from a state of slavery or pure villenage to a condition of secure serfdom or villein-socage, was allowed and established as a natural and just progress. There is no mention, so far as can be ascertained, of a thirty years' term of probation in the ancient Irish laws and institutes, which had been revised and re-issued under Christian auspices, before this edict was promulgated. But it does not follow that this grace was not extended to slaves in Ireland, soon after its publication. Whilst the principles of the Imperial laws were disseminated through the monasteries, the Institutes of Justinian were included in the course of studies prescribed in the Irish law schools. In Queen Elizabeth's time, an English Jesuit describes the Irish law students at work. They devoted fifteen or twenty years to study, and the "Civill Institutions" formed one of their manuals.* As those laws were, indeed,

* Campion, *Historie of Ireland*, Dublin edition, 1807, p. 26. Ware also says: "They likewise had judges among them, called Brehons, who at certain appointed times, in the open air, and usually upon a hill . . . determined what controversy happened among their neighbours. These judges were not acquainted with the laws of England, but in matters depending before them, gave judgment partly according to the civil and canon law and partly in accordance with the customs in use among themselves." Ware, *Antiquities of Ireland*, London, 1714, c. xxx.

generally studied, their direct influence must have been of itself considerable.

The Anastasian law was operative, and its benefits were extended to the children of the emancipated slave. As this extension had not been expressly laid down, it was questioned whether his offspring should not also serve thirty years. But after reciting these doubts, another law decrees that the children of the free serf or colonus should be free, nor burthened with a worse condition than their father: "Sancimus, liberos colonorum esse quidem in perpetuum, secundum præfatam legem, liberos et nulla deteriore conditione prægravari."* They were not allowed, however, to migrate, any more than their father; they should stick to the land (*terræ inhæreant*). No person should receive an *adscriptitius* or colonus, without giving notice to the lord "*vel ipsius adscriptitii, vel terræ.*" The distinction in the terms is noticeable: the "*dominus*" was lord of the pure villein (whether *in gross*, i.e., annexed to the person, or *regardant*, annexed to the manor), but only lord of the land of the villein-socman. In those days it was often as difficult to retain a cultivator, as latterly it has been for an Irish cultivator to retain his farm. Then, however, the laws promptly interfered, and ordered them, whether "*servos vel tributarios, vel inquilinos*" to remain with their lords† If any received a runaway, he was regarded as a thief,‡

* *Codex*, xi. 47, s. xxiii.

† *Ibid*, xi. 47, s. xii.

‡ *Digest*, xi. 4, Ulpianus.

and he was amerced in a heavy fine.* As it was considered "inhumanus" to deprive the farm, as it were, of its wonted members, no one could dispose of a property and yet bargain to retain the cultivators for transference to another place.† They were strictly excluded from military occupations‡

The children of free women were freed from the adscript state by Justinian. On account of the stir caused by this, he had to explain that the edict was not retrospective: "Sancimus ut omnes qui nati sunt a tempore legis, iique soli, ab adscriptitia conditione liberi sint, si quidem ex liberis mulieribus nati fuerint."§

Finally, a most important decree gave the colonus a right of legal action against his lord. This afterwards in England was a distinctive mark between the freeman and pure villein.|| But this decree possesses an additional and exceptional importance from the fact that it bestows this legal power on the cultivator, in one case, *that he might prevent the landlord from raising his rent or exacting more than what ancient custom allowed.* He was empowered to cite his lord before a judge, to have the increase abated and prohibited, and to obtain restitution of what had been extorted by undue exactions:

"Quisquis colonus plus a domino exigitur, quam ante consueverant, et quam in anterioribus tempori-

* *Code.c.* vi. 1. † *Ibid.* xi. 47, s. ii. ‡ *Ibid.* xi. 47, s. xviii.

§ *Novellæ Constitutiones*, Novella liv. c. 1.

|| Blackstone's *Commentaries*, Book ii. chap. 6.

bus exactum est, adeat iudicem cuius primum poterit habere præsentiam, et facinus comprobeat, ut ille, qui convincitur amplius postulare, quam accipere consueverat, hoc facere in posterum prohibeatur, pius reddito quod superexactione perpetrata noscitur extorsisse.”*

Thus, in the first half of the sixth century, the great principle was established over Christendom that agricultural slaves should obtain *security of tenure at a certain rent after thirty years of occupancy*.

The children succeeded to the father. The lowest kind of cultivators who had any pretensions to freedom, who were bound to the soil, and but one remove from slavery, yet enjoyed perfect security and continuity of tenure. Than their estate, that of villein-socage, nothing could be surer, and if their position was not so honourable as that of free-holders, neither was it charged with their burthens of military service.

* *Codex*, ix. 49. The secure position of a freeman is well known. The following decree, published by Lothaire, Emperor of the Occident, in the ninth century, has, however, been overlooked. *He orders that no soldier shall be ejected from his feud or holding, unless after a proven fault, and by the judgment of his peers.* Even then, if he impugned the justice of the decision, he had a right of appeal :

“*Imperator Lotharius Augustus Eugenio Papæ et Universo Populo.* Sancimus ut nemo miles adimatur de possessione sui beneficii, nisi convicta culpa, quæ sit laudata, per iudicium parium suorum. Si autem dixerit miles quod sui pares inique iudicassent, miles in possessione maneat per sex hebdomadas, et ad nostram veniat præsentiam cum illis, qui laudamentum atque iudicium fecerint, et ante nos definiemus.”

Rubr. Ut miles fidelis de possessione feudi non ejiciatur sine culpa. *Feudorum Libr.* l. i. t. xxii.

If this legislation did not originate, it at least firmly established amongst the cultivator classes in Christian Europe, a tradition of rights, which, where not formally legalized, became embodied in customs; and which, when transgressed by the lords, has always been potent enough to cause resistance and tumults.

This public sentiment of their rights, established by Christian legislation, would soon have died under manifold oppressions, had it not been for the existence and expansion of a strongly organized and authoritative Church. Inspired by a divine purpose, and speaking with one voice, through innumerable synods and councils in different countries, it compelled, whilst labouring to protect the oppressed, the obedience of the powerful by dire penalties. It recognized slavery as a general fact, but, in principle, its doctrine was hostile to its existence. It taught that all men were the children of one Father, the brothers of one family; its vital message to the world was that God so loved all mankind that in His Word He assumed human form to dwell among men for their redemption. Expected to appear in the purple of royalty, He chose for His cradle a manger and for His throne a cross. The promulgation of such doctrine humiliated the oppressor, and made the oppressed take heart. The Church which taught it could not prevail without transforming society, and drawing all men to the same plane of freedom and equal rights. Its energies in all countries and at all times were given to ameliorate

the condition of the slaves and to work out their emancipation. Whoso maltreated them had to suffer penance ; whoso slew them was excommunicated. Sanctuary was given to fugitives ; the Church constituted itself the guardian of the liberty of freedmen ; it was lawful to sell even the sacred vessels to redeem captives ; slave-traders were cut off ; those who kidnapped Christians in order to sell them were adjudged guilty of homicide. Many openings to freedom were made, and the marriage of slaves was a sacrament as sacred as that of free men. Bishops were empowered to enfranchise and pension off deserving serfs of church lands ; slaves were admitted to the brotherhood of the religious orders, and their bonds fell from them on the threshold.*

It is more than probable that on the church lands, in all European countries, the Anastasian law, as supplemented, was allowed to prevail. Ussher, in his tract on "Corbes, Herenaches, and Termon Lands," says that, "there appertained unto churches two sorts of tenants, *servi ecclesiæ cum onere*, in the nature of villeins, 'et liberi,' or *coloni ecclesiastici*, as may be seen by the laws of the old Almaynes, where several fines are set down for the killing of either of them, such as the Irish call *erich* or *pretium sanguinis*, and likewise a taxation of the ordinary duties which both of them were bound to perform to the church whereto

* Balmez, *History of European Civilization*, Note 15, Canons relating to Slavery.

they were regardant. The first is to be read in titles 8 and 9, 'si quis ecclesiasticum servum vel regium occiderit, tripliciter componetur, hoc est xlv sol. Quicumque liberum ecclesiæ, quem colonum vocant occiderit, sicut alii alemanni ita componatur.' **

An Irish synod, held in the middle of the fifth century, at which St. Patrick (once a slave-captive) was present, ordered that a cleric who desired to free a captive should ransom him at his own cost, but should not steal him from his master.† In 1102, the Council of London denounced the infamous trade in slaves, still practised in England, ordering: "ne quis illud nefarium negotium quo hactenus in Anglia solebant homines sicut bruta animalia venundari, deinceps ullatenus facere presumat." And the Council of Armagh, in 1171, decreed the emancipation of all the English slaves in Ireland, which the Irish had been accustomed to buy from merchants and pirates. Cambrensis says it had been the custom of the Anglo-Saxons, rather than endure privation, to sell their children: "Anglorum namque populus, adhuc integro eorum regno, communi gentis vitio, liberos suos venales exponere, et priusquam inopiam ullam aut inedium sustinerent, filios proprios et cognatos in Hiberniam vendere consueverant."‡

Although the Council of Armagh made the decree,

* Ussher, *Whole Works*, vol. xi. p. 427.

† Balmez, *European Civilization*, Note 15, s. 3. Compare: "Is qui fugitivum celavit fur est." *Digest*, xi. 4, Ulpianus, lib. 1.

‡ Cambrensis, *Hibernia Expugnata*, c. xviii.

it does not necessarily follow that slavery was immediately abolished. In the first place, its decree referred only to English slaves; any others were untouched. Internecine strife procured captives, and there were still many opportunities of acquiring foreign thralls. Eighteen years before, the Northman, King Eystein Haroldsson, had made a royal raid upon England, and a hundred and twenty years later King Hakon Hakonarson descended upon Scotland. There were, besides, adventurous vikings who harried the coasts.*

To the Northmen in the seaports of Ireland they could run and dispose of their live cargos for years after. Nor, in the second place, is it certain that the Irish would inquire too curiously into the nationality of the slaves offered them, in order to reject scrupulously those who were English. The Council, according to Cambrensis, had regarded the invasion as a punishment upon the country for having held such slaves;

* It would appear that the Irish and Norse sometimes combined their forces for an excursion, from the following: "Ketil Kalf and Gunhild, of Ringaness, had a son called Guttorm, and he was a sister's son to King Olaf and King Harold Sigurdsson. Guttorm was a gallant man, early advanced to manhood. He was often with King Harold, who loved him much, and asked his advice, for he was of good understanding, and very popular. Guttorm had been engaged early in forays, and had marauded much in the Western countries with a large force. Ireland was for him a land of peace; and he had his winter-quarters often in Dublin, and was in great friendship with King Margad (Murchad). The summer after, King Margad and Guttorm with him went out on an expedition against Bretland (Wales), where they got immense booty."—*Heimskringla*, c. lvi.

but it is possible that many discriminated between the Anglo-Normans and the Anglo-Saxons, and knew that the former who invaded Ireland did themselves hold the latter as villeins. When the Irish openly resisted King Henry II., notwithstanding the Papal bull, it is improbable that they voluntarily emancipated their English slaves. The Irish Annals of the Four Masters altogether ignore the meeting of any Council in that year. Far from appearing to endorse that opinion of the providential character of the invasion, which Cambrensis, himself an intruder, ascribes to the Council, they record that miracles were wrought against those who condoned or encouraged the irruption. Thus in 1170, the treachery of Diarmid MacMurchad and his invaders to the Danes is mentioned as a divine chastisement inflicted on the latter for having deserted the Irish. In 1171, Diarmid, for having invited the invaders and destroyed churches, "died before the end of a year, of an insufferable and unknown disease, for he became putrid while living, through the miracle of God, Columcille, and Finnen, and the other saints of Ireland," and died unshriven, unanointed, "as his evil deeds deserved."* In 1176, the death of Strongbow is recorded as another instance of divine punishment. In 1177, there is, indeed, mention made of a Synod being called together in Dublin. Cambrensis states that it published certain specified

* *Annals*, 1170, 1171.

decrees in favour of the invaders ; the Irish annalists simply but significantly record that it passed many ordinances, which were not observed. It may be inferred, therefore, that, if Cambrensis be accurate in his first statement, the decree had no effect ; English slaves were not emancipated in Ireland, but remained in the condition of villeins.

The continuance and augmentation of villenage in the Pale was favoured by the manner in which the Irish were dealt with. They were refused the legal rights of freemen, unless they had obtained patents of denization. These were common in every king's reign from Henry II. to James I.* The "Five Bloods," that is to say, O'Neil of Ulster, O'Molaghlin of Meath, O'Connor of Connaught, O'Brien of Thomond, and MacMurrough of Leinster, obtained their legal rights early. Without such patents, no Irishman had security for his property or life in the Pale. He could not bring an action, if robbed ; "it was often adjudged," says Sir John Davis, "no felony to kill him in time of peace." It was usual for the malefactor to plead that his victim was "*Hibernicus et non de quinque sanguinibus*," "an Irishman and not of the five bloods," i.e., septs ; or, "*Hibernicus et non de libere sanguine*," "an Irishman and not of free blood." "The mere Irish," Davis remarks, "were not only accounted aliens but enemies, and altogether out of

* Davis, *A Discoverie of the True Cause*. Dublin, 1787, p. 80.

the protection of the law ; so as it was no capital offence to kill them ; and this is manifest by many records." But, although this is undoubtedly true, an additional case which he cites shows that, in some cases at least, their position in law was that of villeins. At a gaol delivery in Waterford, in 1311, Robert Walsh was indicted for having feloniously killed John, the son of Ivor MacGillememory. He acknowledged the fact, but said it could not be considered a felony, because the said John was a mere Irishman and not of free blood. But he added, "*cum Dominus dicti Johannis (cujus Hibernicus idem Johannes fuit) die quo interfectus fuit, solutionem pro ipso Johanne Hibernico suo sic interfecto petere voluerit, ipse Robertus paratus erit ad respondend. de solutione prædict. prout justitia suadebit.*"* This indication that the lord of the said John, "whose Irishman he was," might demand damages for his slaying, is a proof that here, at all events, the non-denizenized Irishman occupied the legal position of a mere villein or slave,† not that of an enemy, for whom no damages could be sought.

The last mention of Irishmen having been doomed to slavery, occurred some three hundred and fifty years later. In 1631, two Algerine galleys attacked the small seaport town of Baltimore, and some of the

* Davis, *A Discoverie of the True Cause*. Dublin, 1787, p. 83.

† "*Servis autem ipsis quidem nulla injuria fieri intelligitur, sed domino per eos fieri videtur.*"—Justinian, *Inst.* iv. 4.

inhabitants were carried off by the savage pirates as slaves to Africa.* A quarter of a century after, the pious Protector Cromwell deported hundreds of Irish persons into bondage in the West Indies. Though this was the last sale of captives as slaves, so far as Ireland is concerned, villenage, as shown in the foregoing History of Land Tenures, has remained much later. In 1776, in Arthur Young's time, the lord's custom of exercising, with impunity, the power of life and death over a poor man, or "villein," had only just died out (p. 130).

The peculiar manner in which the name "Hibernicus" was employed, in the case cited from Davis, reminds us that at the same period and for long after, in England, the name "Englishman," or "Saxon," or "native," was synonymous with slave or villein. Thus, in the reign of Henry II., by the Constitutions of Clarendon, it was forbidden to ordain as priests, without the consent of the lords of manors, those who in the Norman tongue were called *natifs* or *naifs*, that is to say, villeins, who were all of old Saxon and indigenous race.† "About the year 1381, all those who were called *bonds*" (cottiers and cottagers) "in England, that is, all the cultivators, were serfs in body and goods; obliged to pay heavy aids for the small portion of land which served them to feed their families; and were not at liberty to give up that

* Smith, *The County and City of Cork*, Second Edition, vol. i., p. 270.

† Thierry, *The Norman Conquest*, Third Edition, translation, B. ix.

portion of land without the consent of the lords, for whom they were obliged to do gratuitously their tillage, their gardening, and the carriage of all commodities; the lord could sell them, together with their houses, their oxen, and their implements of husbandry, their children and their posterity, which in the English deeds was expressed in the following manner, "Know that I have sold ———, my knave (native) and all his offspring, born or to be born (nativum meum cum totâ sequelâ suâ procreatâ et procreandâ)."[†] In 1547, it was ordered (1 Ed. VI. c. 3) that all idle vagrants should be seized and made slaves.

Though rural villeins may have almost all merged into copyholders, as Blackstone says, before the reign of Charles II., yet bondage endured in mining districts. Thus an act passed in 1775 recites that 'many colliers and coal-bearers and salters are in a state of slavery and bondage, bound to the collieries or salt-works, where they work for life, transferable with the collieries and salt-works.' It purported to assist them in obtaining freedom, but its provisions could be abused to trammel them. Another act, passed in 1799, states that 'many colliers and coal-bearers still continue in a state of bondage.' Hugh Miller, the Scottish geologist, describing a dingy tile-covered village near the capital of Scotland, remarks, "curious as the fact may seem, all the elder men of that village,

* Thierry, *The Norman Conquest*, Third Edition, translation, B. ix. s. 5.

though situate little more than four miles from Edinburgh, had been born slaves. Nay, in 1842, when parliament issued a commission to enquire into the nature and results of female labour in Scotland, there was a collier still living, that had never been twenty miles from the Scottish capital; who could state to the commissioners that both his father and grandfather had been slaves; and that he himself had been born a slave; and that he had wrought for years in a pit in the neighbourhood of Middleburgh ere the colliers got their freedom. . . . They were cotemporary with Chatham, and Cowper, and Burke, and Fox; and at a later time, when Granville Sharp could have stepped forward and effectually protected the run-away negro who had taken refuge in a British port, no man could have protected them from the Inveresk laird, their proprietor, had they dared to exercise the right of removing to some other locality or of making choice of some other employment. . . I regard it as one of the more singular circumstances of my life that I should have conversed with Scotchmen who had been born slaves. . . Even the men of thirty had actually come into the world in a state of bondage.”*

Habit endures longer than law. Sales of human beings have taken place, even last year, in England. In March, 1870, the *Pall Mall Gazette*, of London, had the following note. “The fact of an English boy

* Miller, *My Schools and Schoolmasters*.

having been literally sold into slavery came before the Dewsbury magistrates, on Monday. The lad was left an orphan when very young, and was taken charge of by a man named Field. As soon as he was able to do a little work, Field sold him for two pounds to a collier at Ravensworth. Happening, last Friday, to offend his master, he beat him about the head and shoulders with the blade of a spade, inflicting several severe wounds."

It cannot be doubted that the cases of wife-selling, which occasionally do take place in the provincial parts of England, are remnants of slave-dealing, or slave-selling, still lingering on. The two instances which follow are quoted from English provincial papers, in which they were published last autumn (1870). The language in which the sale is described is not that of astonishment, nor, indeed, of indignation:—"The spectacle of the sale of a wife was to be seen in Bury, on Sunday evening. A man and his wife living in the Crescent, Freetown, Bury, having a family of eight children, have lately lived together on unpleasant terms, in consequence of the wife having a strong affinity for a man on the opposite side of the street. The evil had grown to such an extent, that on Sunday night the injured husband determined to part with his faithless wife, and, after due announcement, put her up for sale by auction. There were two bids of 4s. 6d. and 8s., the latter being made by the woman's paramour, to whom she was knocked down;

and he then led her away to her new home, with a halter about her neck, as a sign of her servitude."

"On Monday night, a baker led into a room in a Preston public house, with hands bound, and a halter around her neck, his wife Agnes, a woman of about twenty-seven years of age, who is a winder at a mill, and offered her, before a large company, for sale by auction. The woman was put up at a shilling, on which a girl in the room offered a shilling more; one of the men bid half-a-crown, and at this figure the wife was knocked down to him. . . . During the evening a factory operative offered three shillings for his bargain, and the woman was transferred to him."

Such scenes should be impossible at the present day, and yet it is more than probable that behind the few cases which obtain publicity, there are others whose occurrence is never reported.

III.

HABITATIONS AND SOCIAL CONDITION.

THAT the Irish had forts, churches, monasteries, and round towers, before the Anglo-Norman invasion, has been long notorious.* They had towns also, irrespective of those erected by the Northmen. In the sixth century, 7000 students attended the University of Armagh; in the tenth, 5000 attended that of Cashel, not to mention other places. The houses required to shelter such numbers of students would have sufficed to form towns, and it is obvious that there must have been a great number of people assembled in such localities, besides students and monks. In a thickly-wooded country, such as Ireland, the inhabitants constructed almost all their edifices of wood. In doing so they were not singular. Cæsar found the Gauls living in large villages constructed of that material. Tacitus described the Germans as having no regular cities. They dwelt in separate habitations dispersed through

* "A.C. 1145. A lime-kiln, which was sixty feet every way, was erected opposite Eaman Macha, by Gillamacliag, successor of Patrick, and Patrick's clergy in general."

"A.C. 1163. A lime-kiln, measuring seventy feet every way, was made by the successor of Colum-cille, Flaherta-ua-Brolchain, and the clergy of Colum-cille, in the space of twenty days."—*Annals of the Four Masters*.

the country, wherever a grove, meadow, or fountain appeared to invite. They had villages but not in the Roman fashion, for the tenements stood detached to prevent accidents from fire. They built rudely with rude materials, but they covered particular parts with pure shining earth, so as to imitate painting with characteristic colours. They had also caves like the Gauls and Irish as places of retreat. Ovid mentions such kinds of habitations as belonging to the primitive ages :

“ Domus antra fuerunt
Et densi frutices, et junctæ cortice virgæ.”*

The Norse likewise used wood for building : “ The different classes were not separated from each other in society, by the important distinction of a difference in the magnitude or splendour of their dwellings. The foundation of a few loose stones, on which the lower tier of logs is laid to raise it from the earth, remains always the same, although all the superstructure of wood may have been often renewed ; but these show the extent on the ground of the old houses. The equality of all ranks in those circumstances of lodging, food, clothing, fuel, furniture, which form great social distinctions among people of other countries, must have nourished a feeling of independence of external circumstances—a feeling also of their own worth, rights, and importance among the bonders—and must

* Ovid, *Metamorph.* l. i.

have raised their habits, character, and ideas to a nearer level to those of the highest.* The kings had no castles, and could not tyrannize.

There was not, however, perfect equality in the social appliances any more than in the social conditions of the various classes, but the distinctions were small in comparison with the hard-drawn lines which divided the feudal lord in his stronghold from the peasant in his hut.

In Ireland wickerwork, *i.e.*, branches interwoven on stakes or poles, appears to have been extensively used. Wickerwork bridges are mentioned in the *Annals of the Four Masters*, as having been constructed over rivers so wide as the Shannon, before the Anglo-Norman invasion. Hoveden relates that Henry II. erected a royal palace in Dublin in 1172, of smoothened wattles after the custom of the country, and with surprising art (*miro artificio*).†

The Northmen had not built the seaport cities of stone; neither did the English citizens set about to erect their ordinary dwelling houses thus. "Both before and in the reign of Queen Elizabeth," the citizens constructed their houses "of timber built in the cage-work fashion, elegantly enough adorned and covered with slates, tiles, or shingles."‡ Many such

* Laing, *Heimskringla*, vol. i., c. iii.

† *Roger de Hoved.* ed. Savile, p. 528.

‡ Warburton, Whitelaw and Walsh, *History of the City of Dublin*, 1818, vol. i. p. 77.

cagework houses were standing in Dublin at the close of the last century. In 1766, the oldest known was called "the Carbrie," and had been the mansion of Gerald, Earl of Kildare, some 230 years previously. Thus "before and during [and after] the reigns of Henry VIII., Edward VI., Mary, and Elizabeth, most of the [English] buildings for habitation here were of the cage-work fashion, and only castles, towers, churches, monasteries, and other buildings appropriated to religion and charitable uses, were built of lime and stone. . . . It may be doubted from what has been said, whether any of the thin modern buildings will continue for so long a period as some of the cage-work houses before mentioned have done."* Only one of such edifices is recorded as standing in Dublin in 1818, but in England they are more common. The house in which Shakspeare was born at Stratford, is described by a writer as being "one of those old edifices which are still frequently to be seen throughout Warwickshire, composed of a framework of timber, formed in squares, with the intervening compartments filled up with mud and plaster, or as it is locally termed 'wattle and dab.'"[†]

Though some of the planters, in James's plantation, built (according to their obligations) castles or houses of lime and stone, yet others did not do so, but

* Warburton, Whitelaw, and Walsh, *History of the City of Dublin*, 1818, vol. i. pp. 78-9.

† *Chambers' Journal*, Shakspeare Tercentenary Number, 1864, p. 3.

lived in timber houses, as Pynnar relates. Most if not all of the British tenants erected dwellings similar to those built by the tenants of Blennerhassett, of whom it is written : "he hath also a small village consisting of six houses built of cage-work, inhabited with English." Thus Irish and English husbandmen used the same material in constructing their dwelling houses. The destruction of the woods, during the Cromwellian and Jacobite wars, compelled both English and Irish to have recourse to stone-built houses, which were not necessarily more handsome, nor more comfortable.

A square flat-roofed log-house, plainly but solidly built, has been disinterred in a bog. From such an abode to that royal palace which, though erected for a temporary occasion, attracted the admiration of Hoveden, there were many grades. Whilst there were temporary wickerwork booths inferior to the former, erected for shepherds and slaves, there were also permanent palaces superior to that hastily constructed for Henry II. The repute of the Irish as workers in wood was still remembered at the commencement of the present century. Taaffe remarked, in 1811, that "every smatterer in Irish antiquities knows that the Irish excelled in timber work;" and he adds, "I remember to have seen two houses in Shop-street, Drogheda, finished indeed with curious art. The joists of oak were curious, carved into ovals, circles, and parabolic sections; the date was carved in oak, in figures about two feet long, and, as I think,

was 1074. I have seen wooden houses in Pilnitz, Reichenau, and other towns of Bohemia, and Germany, but none of such curious and elegant, as well as durable workmanship.”* He also observes that feudal lords (obliged to have stone castles as strongholds amongst invaded nations), envying the comfort of the wooden habitations, procured “Scots” or Irish workers, to cover the interior with wood, *i.e.* wainscoting. Although Taaffe’s evidence is not conclusive as to the origin of the houses in Drogheda, it suffices to prove the continued tradition of Irish skill in handicraft to which many invaders bore witness, like Cromwell’s planters.†

For direct evidence as to the social condition of the ancient Irish land-classes, recourse must be had to Celtic authorities. They furnish a wonderfully com-

* Taaffe, *An Impartial History*, vol. i. p. 540. In his novel of *Notre Dame* (c. 5), Victor Hugo describes the chamber of Louis XI. as having ‘one of those porches of Irish wood (*bois d’Irlande*), as it was called—frail structures of curious cabinet-work which were still to be seen abounding in old French mansions a hundred and fifty years ago.’ In one of Beaumont and Fletcher’s plays mention is made of a prevalent English belief that spiders would not build on Irish wood.

† “Moreover, there were few of the Irish peasantry but were skilful in husbandry, and more exact than any English in the husbandry proper to the country; few of the women but were skilful in dressing hemp and flax, and making woollen cloth. In every hundred men there were five or six masons and carpenters at least, and those more handy in building ordinary houses, and much more skilful in supplying the defects of instruments and materials than English artificers.” Prendergast, *Cromwellian Settlement*, First Edition, p. 57. *Great case of Transplantation discussed*. London: 1655.

plete and vivid revelation of the manners and customs of a non-Roman nation, at a period of European history for which such a description is most required. The investigation of this matter is the subject of Professor O'Curry's forthcoming Lectures on Irish History and Archæology. Here it must suffice to quote, from a legal work of the middle of the fifth century, an extract of particulars from which the reader can obtain some general idea of the condition and appliances of an Irish husbandman living fourteen hundred years ago. The quotation, taken from the Law of Distress,* is somewhat condensed ; the words between brackets give the explanations presented by the later gloss or comment.

In the rule of one day's stay were included distresses for [ornamented] " raiment for the festival day, weapons for the battle, a horse for the race, an ox for ploughing, a cow for milk, a pig with fatness [at the time of meat-saving or bacon-making] ; a sheep with its fleece [in the time of shearing] ; the withholding of his food-tribute from a king, the food-tribute of a chieftain, the deficiency of a feast, the furniture of a church [the requisites of the mass] ; the requisites for every kind of music, the furniture of each person's house [plaids, bolsters, &c.] ; the requisites for cooking—a fork and a caldron, a kneading-trough and a sieve; the taking away of a measure from the chief-

* *Ancient Laws and Institutes of Ireland*, vol. i., pp. 122-169.

tain [one of the three measures of malt, &c., or scales]; the cleansing of roads, the cleansing of the fair green, for taking care of parties from the sea [for saving and feeding shipwrecked people and mariners]; for the difficult removal of a vagrant; for what is right in respect of the net, for the law respecting the river, for the sick maintenance of every person [his goodly relief, a substitute and an attendant]; for providing for him a physician, food, proper bed-furniture, a proper house [not one of the three inferior houses, but having four doors, with a stream running through it], and guarding him against things prohibited by the physician [improper food, or intrusion of fools, scolds, or dogs]; for what is right in respect of a fort [one's share in the common fort of the tribe]; and of a house between heirs; for a car in the time of carriage; for what is right in respect of the bank in the time of turf carrying; for taking care of the green;*

* The gloss states this to mean the field of grass or corn, from which it was proper to keep the cattle when going out in May, or in going from the green of the old winter residence to a summer pasture in the mountains. Spenser mentions this custom as prevalent in Elizabeth's reign. The Irish, he says, do "keepe their cattle and live themselves, the most part of the year, in boolies, pasturing upon the mountains and waste wild places." *A View of the State of Ireland*, p. 82. What Spenser terms "boolie" was named creaght in an act of Henry VI., 1440, and by Davis and Blennerhasset. In his notes to the Kilkenny Statutes, Hardiman says that this custom was in general use until the middle of the 17th century, and adds: "in some remote parts it is still the custom to drive the cattle to the mountains for summer pasture. Here the people erect temporary huts, and make their butter

for removing to the houses; for wages [the tenth part of each article, with food]; for shaving [portion of cake and bacon]; for the blessing [given by workmen to work when finished]; for the tools of a carpenter, and of a smith; for the caldron of the house of the farmer; for the great caldron of each quarter; for the churn, pitcher, cup, and all moveable vessels; for the seven valuable articles of the chieftain's house [caldron, vat, goblet, mug, reins, bridle, pin]; for what is right in respect to corn [the size of the rick]; fruit, ripe corn; for a wood, for erecting a bridge [whether stone or wooden]; for the distribution of the bones of a whale [used for backs of sieves, saddle trees]; for a cow which the champions [or bailiffs of the people] provide for victualling a fort; for the duties in respect of a captive; for the maintenance of a fool [who can work]; of a mad woman [who cannot work], whose rights precede all rights; for the maintenance of fathers and of mothers; for the witness of a contract; for assisting the fuidir against every injustice; for a knife—a reflector—the toys of children [hurlets, balls,

during the fine season, and in winter they return to their homes." The same custom was common in Norway, *Heimskringla*, *Saga* VII. c. 189, and is still generally followed. Whilst the fault-finding planter complained of its existence in Ireland, the disinterested tourist in Norway praises the pleasures of the Saeter, v. *Through Norway with a Knapsack*. Schiller refers to a similar custom in Switzerland, in his *Wilhelm Tell*, in the herd's song :

" Wir fahren zu Berg, wir kommen wieder,
Wenn der kukuk ruft, wenn erwachen die Lieder."

hoops, little dogs, and cats]; for removing to the houses [from the hired land to the winter residence]; for a bridle, for reins [for the chariot]; for a hatchet, for a billhook; for the rope of the farmer's house [for tying loads]; for the hook of the widow's house; for a barn in the time of harvest; for a haggard in common; for the eight parts which constitute a mill: the spring, the mill-race, the land of the pond, the stone, the shaft, the supporting stone, the shaft-stone, the paddle wheel, the axis, the hopper; for a boat which ferries from bank to bank; for the chess-board of the chieftain's house; for the salt of the hospitaller's house; for a lock for securing things from across the sea [horses and men, *i.e.* slaves]; for a bell from the necks of cattle; for tillage in common; for herding in common; for the common [*i.e.* guest] bed of neighbours; for a griddle; for the griddle-slice [for turning the cake]; for the branch-light of each person's house; for the blower [bellows] of a chief's house; for keeping a bull, a stallion, a ram; for a hound of the dunghill; for the watch-dog; for every kind of cattle; for a lap-dog; for a watch-dog [*i.e.* the chained dog]; for the lawful hunting hound.*

Under the rule of three days' stay, mention is made of "cutting thy wood, breaking thy land, injury caused

* The Irish dogs were renowned for their worth. Mention is made of them in the Norse Sagas, and in the Saga of *Burnt Njal* an instance of the fidelity of one of them is given which equals that of Llewellyn's hound.

by thy stakes, thy ploughed land, weir, kilns for drying, mills for grinding, boats, baskets, carts, chariots, vata, caldrons, hatchets, wood-axes, silver-mines, herb-gardens, bee-hives, sea-marsh crops, corn-ricks, turf, fern, furze, rushes and fences, by-roads and fair-greens."

The simple enumeration of these things, as matters of ordinary use or occurrence in the fifth century, indicates that even the rural classes in Ireland already enjoyed a comparatively high state of civilization when Christianity was introduced. The poetical description of the palace of Credé, princess of Kerry, contained in an ancient tract,* presents a picture of a luxurious royal abode. Even though the bard indulged his imagination, yet his fancy must have rested on facts, otherwise his intended compliment would have been an offensive satire. The noble collection of gold ornaments in the museum of the Royal Irish Academy tends to confirm this view. The bard says :

"The colour of her fort is like the colour of lime; within it are couches and green rushes; within it are silks and blue mantles; within it are red gold and crystal cups.

"Two door-posts of green I see; nor is its door devoid of beauty; of carved silver (long has it been renowned) is the lintel that is over its door.

"Credé's chair is on your right hand; the pleasantest

* O'Curry, *Lectures on the MS. Materials of Irish History*, pp. 307-311.

of the pleasant it is; all over, a blaze of Alpine gold, at the foot of her beautiful couch.

“An hundred feet spans Credé’s house, from one angle to the other; and twenty feet are fully measured in the breadth of its noble door.

“Its portico is thatched with wings of birds both blue and yellow; its lawn in front, and its well, of crystal and of carmogal.”

IV.

CHAPTER III. PRIMOGENITURE.

CONTRARY to a popular opinion the custom of primogeniture was not necessarily a concomitant of the feudal system. Anciently the feuds descended to all the male children equally, the females being excluded (as in the Irish system) unless for special reasons. Thus we read: "Si quis igitur decesserit, filiis et filiabus superstitibus, succedunt tantum filii æqualiter, vel nepotes, ex filio loco sui patris, nulla ordinatione defuncti in feudo manente vel valente . . . Filia vero non succedit in feudo, nisi investitura fuerit facta in patre, ut filii et filiæ succedant in feudum."*

This fact is given due prominence by Blackstone. He says: "The right of primogeniture in males seems anciently to have only obtained among the Jews, in whose constitution the eldest son had a double portion of the inheritance; in the same manner as with us, by the laws of Henry I., the eldest son had the capital fee, or principal feud, of his father's possessions, and no other pre-eminence; as the eldest daughter had afterwards the principal mansion, when the estate descended in coparcenary. The Greeks, the Romans, and the Britons, and even origi-

* *Feudorum, Libr. l. i. t. viii.*

nally the feudists, divided the lands equally—some among all the children at large, some among the males only. This is certainly the most obvious and natural way, and has the appearance (at least in the opinion of younger brothers) of the greatest impartiality and justice. But when the emperors began to create honorary feuds and titles of nobility, it was found necessary, in order to preserve their dignity, to make them impartible, or as they styled them, *feuda individua*, and in consequence descendible to the eldest son alone. . . . In this condition the feudal constitution was established in England by William the Conqueror. Yet we find that socage estates frequently descended to all the sons equally, so lately as when Glanville wrote in the reign of Henry II.”

The statement that primogeniture anciently obtained only among the Jews, though given without modification in the latest edition of the *Commentaries*,* is inaccurate.

Primogeniture holds an important position in the *Institutes of Menu*. Elsewhere the custom is only accounted for by motives of expediency; there it rests on a vital principle, and is the external manifestation of a religious mystery. The following translated extracts will sufficiently show this:—

“The husband, after conception by his wife, be-

* Stephen, *New Commentaries* (partly founded on Blackstone), Sixteenth Edition, 1868, vol. i. p. 417.

comes himself an embryo, and is born a second time here below ; for which reason the wife is called *jáyá*, since by her, *jáyaté*, he is born again. Now the wife brings forth a son endowed with similar qualities to those of the father.”*

The words between brackets in the following extract are the additions of a commentator, Culluca Bhatta, and some of them indicate that the ancient law of primogeniture became modified in the process of time :—

“ The eldest brother may take entire possession of the patrimony, and the others may live under him, as [they lived] under their father [unless they chuse to to be separated].

“ By the eldest at the moment of his birth, the father having begotten a son, discharges the debt due to his own progenitors ; the eldest son, therefore, ought [before partition] to manage the whole patrimony.

“ That son alone, by whose birth he discharges his debt, and through whom he attains immortality, was begotten from a sense of duty ; all the rest are considered by the wise as begotten from love of pleasure.

“ Let the father alone support his sons, and the first-born his younger brothers, and let them behave to the eldest according to law, as children [should behave] to their father.

* *Institutes of Menu*, translated by Sir William Jones. Haughton's Edition, chap. ix. ss. 8, 9.

“The first-born [if virtuous] exalts the family, or [if vitious] destroys it: the first-born is, in this world, the most respectable, and the good never treat him with disdain.*

“By a son a man obtains victory over all people; by a son’s son he enjoys immortality; and afterwards, by the son of that grandson he reaches the solar abode. Since the son, *tráyaté*, delivers his father from the hell named *put*, he was, therefore, called *puttra* by Brahma himself.”†

There was no right of primogeniture for a woman under this system.

* *Ibid*, chap. ix. ss. 105-9.

† *Ibid*, chap. ix. ss. 137-8.

V.

CHAPTER IX. GAVELKIND. CO-TENANCIES.

ALTHOUGH the Institutes of Menu sanctioned the custom of primogeniture, yet the inheritance was partible if the brothers desired to perform their religious duties in separate abodes. Anciently, even in that case, the first-born obtained the greatest share when the property was divided, and enjoyed also a right of selection. But, in course of time, the privilege of primogeniture succumbed before the claims of equality in merit. This alteration is shown in the following extract, where the emphatic and significant observations of the commentator, Culluca Bhatta, qualifying the text, are enclosed between brackets :—

“ Let the eldest have a double share, and the next born a share and a-half, [if they clearly surpass the rest in virtue and learning]; the youngest sons must have each a share : [if all be equal in good qualities, they must all take share and share alike].”^{*} But in case of equality of labour among the sons, the partition was to be equal, even anciently : “ If among undivided brethren there be a common exertion for a common gain, the father should never make an unequal division among them [when they divide their families].”[†]

^{*} *Institutes*, c. ix. s. 117.

[†] *Ibid*, c. ix. s. 115.

Joint-tenures, naturally arising where members of a family co-operated in the cultivation of land, had also existed anciently. Thus it is written :

“ If brethren once divided, and living together as parceners, make a second partition, the shares must in that case be equal ; and the first-born shall have no right of deduction.”*

They had commons and enclosed fields, as in most land systems : “ On all sides of a village or small town let a space be left for pasture, in breadth either four hundred cubits, or three casts of a large stick ; and thrice that space round a city or considerable town. Within that pasture ground if cattle do any damage to grain in a field uninclosed with a hedge, the king shall not punish the herdsman.”†

The ancient Germans and Gauls appear to have had a system of agriculture analogous to the Irish system described at p. 160, n. Cæsar and Tacitus describe how, when the state or community had taken possession of a tract of land proportioned to the number of individuals, allotments were made them according to their rank or dignity. The ground tilled one year lay fallow the year after. They did not enclose meadows, and, in cultivating, each did not adhere to one spot but all tilled the same place by turns. This was the Irish “ rundale ” system, so called. The identity in

* *Ibid*, c. ix. s. 210.

† *Ibid*, c. viii. ss. 237-8.

later times is unmistakable. What Wakefield describes as the "village" system existed also in Germany, where this collective organization was termed *Markgenossenschaft*, which may be translated "territorial community." In these villages the territory belonged to the whole body of the inhabitants. "Every year, or in some places every third year, or at still longer intervals, the arable lands were divided afresh, often by lot, among all the members of the community; the meadows, or at least the pastures and the forests, remained at the disposal of all. In many localities, where the arable lands were re-divided every three or six years, the hay fields were drawn by lot every year. This community of lands, which *still* exists in Russia, was long preserved on the rest of the continent. In many villages between the Rhine and the Moselle, the fields did not become the definite properties of the cultivators till between 1811 and 1834 at the time of the great survey. In Saarlöbzbach, the houses only were private properties; and it was only in 1863 that the lands ceased to be held in common."* The system existed also in France, where in 1791, the peasant who desired was empowered to enclose his portion and thus free it from "*vaine pâture*," the right which all the inhabitants of a

* *North British Review*, No. civ., 1870, Agriculture and Agrarian Laws in Prussia, p. 475. Professor Sullivan has detected this identity.

village had to graze their cattle on all the fields of the village after harvest.*

Cæsar's description runs thus: "Agriculturæ non student, majorque pars victus eorum in lacte, caseo, carne consistet; neque quisquam agri modum certum aut fines habet proprios; sed magistratus ac principes in annos singulos gentibus cognationibusque hominum, qui una coierint, quantum, et quo loco visum est, agri attribuunt, atque anno post alio transire cogunt."† The Roman writer found something to praise in an arrangement which preserved a portion of land for all, and prevented great accumulations in the hands of a few to the injury of the State. But the Attorney-General of James I. saw nothing but what was blameworthy in the Irish custom; and it is curious that, although in misdescribing it he partly followed Cæsar, he was yet so ignorant or so dishonest as to denounce it as an exceptional custom. First, he explains that Ireland was divided into several territories, and that in each territory was a "seignior" or "chiefetaine,"

* In 1801, a County Statistical Survey, made for the Dublin Society, describing the "rundale" system, used these words: "The cattle graze in common, but the crops are divided by a narrow margin of a foot broad left unploughed." Such margins may still be seen in France and elsewhere on the continent. The Irish had also the system of "vaine pâture." We are told that when the crops are taken off the cultivated ground in harvest, the cattle and sheep are brought from the mountain commons and allowed to graze together here until spring.

† Cæsar, *De Bello Gallico*, l. v. c. 21.

and a tanist, his successor apparent; and that of each Irish sept there was also a chief who was called canfinny, or caput cognationis. After describing how the mensal land of the chieftainship passed with the office (as glebe-lands pass), to the next successor in the office, he says: "Mes tous les inferior tenancies fueront partible enter les males in gavelkind. Encore le estate que le seignior avoit en le chiefry, ou que les inferior tenants avoent en gavelkind, ne fuit estate de enheritance, mes un temporary ou transitorie possession. Car sicome le prochain heire del seignior ou chieftaine ne enheriteroit le chiefry, mes le plus eigne et plus digne del sept. . . . Issint les terres de nature de gavelkind ne fueront partible enter le prochain heires males de cesty qui morust seisie, mes enter tous les males de son sept, en cest manner. Le canfinny, ou chiefe del sept fesoit tous les partitions per son discretion. Cest canfinny, apres le mort de chescun tertenant que avoit competent portion de terre, assembloit tout le sept, et aiant mise tous leur possessions en *hotchpotch*, fesoit nouvel partition de tout: en quel partition il ne assignoit a les fitz de cesty que morust le portion que leur pere avoit; mes il allottoit al chescun del sept, solonque son antiquity. Et issint per reason de ceux frequents partitions et removements ou translations des tenants del un portion al auter tous les possessions fueront uncertaine: et le uncertainty des possessions fuit la very cause que

nul civil habitation fueront erected, nul enclosure ou improvement fuit fait des terres."*

This statement is a studious misrepresentation of facts well known to Davis. His assertion that civil habitations were not erected because of this system, is disproved by the existence of villages; and, in a wooded country with the wolf at large, a system of villages was more appropriate and conduced more to civilization than a system of dispersed habitations. Again, as to the question of improvements, it is obvious that co-operative husbandry was well adapted to clear the forests and reduce wastes to cultivation. It could not have existed had it been utterly bad; nor would it have been continued in France and Germany to the present time had it not had much to commend it. A principal point with Sir John Davis was, that Irish gavelkind differed particularly from the custom of Kent, inasmuch as the father's portion was not divided at once amongst the sons, but was cast with all the tribe-land into a common bulk, which was then re-divided amongst the whole tribe again.

And thus, not only for "l'inconvenience et unreasonable de ceo, mes pur ceo que fuit un mere personal costume, et ne pouissoit alter le discent de inheritance," the justices declared it void in law. Now it has been pointed out (p. 8), that Professor Sullivan finds that

* Davis, Reports, *Le Irish Custome de Gavelkind*.

the father's land was partible among his sons.* It was also shown (p. 161) that this practice of division was so usual amongst the Irish tenants at the commencement of the present century, as to be termed their "common law of inheritance." If such a custom as Davis describes to denounce had a real existence in any localities, it could not have been the general custom; for he confesses that the Irish tenants, in Cavan, met his arguments with pleas "of freehold and estates of inheritance."†

The manner in which he attempts to get rid of this fact is characteristic. "The inhabitants of this country," he said, "do border upon the English pale, where they have many acquaintances and alliances; by means whereof they have learned to talk of a freehold, and of estates of inheritance, which the poor natives of Farmanagh and Tyrconnel could not speak of; although these men had no other nor better estate than they; that is, only a scrambling and transitory possession, at the pleasure of the chief of every sept." Sir John Davis wrote the letter of which this is an extract, with the intention of prejudicing an "appeal

* This fact was also distinctly stated by Sir James Ware, and must have been familiar to Davis. Ware says: "By this custom among the Irish the inheritance of the deceased (below the degree of Tanist) was equally divided among the sons, both lawfully and unlawfully begotten, females being wholly excluded."—Ware, *Antiquities*, c. xxx.

† Davis, *A Letter to the Earl of Salisbury*, 1610.

into England," which he "doubted" the plundered tenants would make. The letter is addressed to Robert, Earl of Salisbury, "That your lordship may understand upon what grounds we have proceeded, especially in that country in which your lordship's precinct doth lie." The hint is very broad. His lordship's share of the plunder would be lost, if the conduct of Davis were not condoned.

That he, of malice aforethought, did misrepresent known facts is demonstrable from his own statements. He says, in the passage quoted, that the natives of Fermanagh could not speak of freehold and estates of inheritance—ideas which the Cavan people got from their English friends. Yet, only three years before (in 1607), in a letter to the same Earl of Salisbury, he referred to estates of inheritance in Fermanagh, and wrote: "The *greatest part* of the inhabitants of that country did claim to be freeholders of their several possessions . . . albeit they hold the same not by course of common law, but by the custom of Tanistry, whereby the eldest of every sept claimed a chieffy over the rest, and the inferior sort divided their possessions after the manner of gavelkind. Therefore, it was thought meet to impanel a jury of the most sufficient inhabitants to inquire and present how many freeholds there were, and what lands they held in this county, and what certain rents and services they yielded to the McGuyres, or other chieftains and tanists in ancient times. Though this was

a business of some labour, *because* the custom of gavelkind had made such petty fractions and divisions of the possessions of this county, *as the number of freeholders was exceeding great*, yet within two days they brought in their inquisition, in Irish." Sir John Davis has proved his own dishonesty.

It is confessed in this extract that the custom of gavelkind multiplied freeholds ; and as freeholds were a secure life-estate at lowest, their owners could not have " a scrambling and transitory possession," nor be shifted about on the death of every father in a clan-territory. If that occurred even monthly, the administrative power should have been marvellous that could ensure a satisfactory redistribution many times a year. Sir John Davis, however, deliberately played false both to crown and people, in order to have Ulster confiscated, and to possess himself of large estates in it.

The word hotchpotch, which he employs, might have tempted him to cite an English custom, as illustrating that of Irish gavelkind, had he not desired to discredit it. For hotchpot was a descriptive term of an English custom. Thus Blackstone:—"There is yet another consideration attending the estate in coparcenary, that if one of the daughters has an estate given with her in frank-marriage by her ancestor. . . . In this case, if lands descend from the same ancestor to her and her sisters in fee-simple, she, or her heirs, shall have no share of them, unless they will agree to

divide the lands given in frank-marriage in equal proportion with the rest of the lands descending. This general division was known in the laws of the Lombards, which direct the woman so preferred in marriage and claiming her share of the inheritance, 'mittere in confusum cum sororibus quantum pater aut frater ei dedit quando ambulaverit ad maritum.' With us it is denominated bringing those lands into hotchpot, which I shall explain in the very words of Littleton :—'It seemeth that this word hotchpot is in English a pudding ; for in a pudding is not commonly put one thing alone, but one thing with other things together. By this housewifely metaphor our ancestors meant to inform us that the lands—both those given in frank-marriage and those descending in fee-simple—should be mixed and blended together, and then divided in equal portions among all the daughters.' "

A like custom of hotchpot is also indicated in this extract from the laws of Menu : " A son born after a division [in the lifetime of his father], shall alone (*rectè*, only) inherit the patrimony, or shall have a share of it with the divided brethren, if they return and unite themselves with him." *

Virgil thus describes what tradition had handed down as the custom of the Golden Age :

* *Institutes of Menu*, c. ix. s. 216.

“ Ante jovem nulli subigebant arva coloni :
Nec signare quidem, aut partiri limite campum
Fas erat. In medium quærebant ; ipsaque tellus
Omnia liberius nullo poscente ferebant.”†

Seneca, quoting the passage, praises their condition as happiest amongst men : “ Quid hominum illo genere felicius ? In commune rerum natura fruebantur, sufficebat illa, ut parens, in tutelam omnium.”

* * Virgil, *Georgic*, l. i. c. 125-8.

VI.

VICIOUS POLITICAL SYSTEM, p. 164.

THE policy pursued towards Irish trade by English protectionists was well described by an Englishman: * his enumeration of the prohibitory acts is not complete, but suffices. "If we were to state to an Irish gentleman," wrote Mr. Eden, "the long continued poverty and idleness which have prevailed over so large a proportion of his countrymen, he would probably answer: 'All this may be very true, but the monopolizing spirit of our sister kingdom is the cause of it: that spirit exercising itself upon Ireland, in a very early state of her civilization, nipped her disposition to industry, and indeed made it impossible for her to become industrious. In the very infancy of

* Eden, *A Letter on the Representation of Ireland, respecting a Free Trade*. Dublin, 1785. It is to be observed that the complaint is made on behalf of the Pale or colony; and it must be recollected that the disabilities inflicted by England on this, its offspring, were light in comparison with the exclusion from towns, trades, and professions which this complaining colony decreed against the Irish nation at large. "The hand-loom weavers, the wool-combers, the clothiers, the dyers, the white-smiths, and even the mariners in the South of Ireland" [and, *a fortiori*, in the North] "were so exclusively Protestant, that they would not allow a Roman Catholic apprentice to be received into any of their trades. The only branch of manufacture permitted to the mere Irish was that of brogues, or common shoes; and even this trade was not allowed to be carried on within the precincts of walled towns."—Otway, *Report on the Handloom Weavers' Commission*, p. iii. 1840.

our country, and whilst we were contenting ourselves with the exportation and sale of our cattle, you made an act* to prohibit those exportations. We next gave our attention to the increase of our ships, in order to export wool, but you forthwith prohibited the exportation of wool and made it subject to forfeiture.† We then endeavoured to employ and support ourselves by salting provisions for sale, but you immediately refused them admission into England,‡ in order to increase the profit of your lands, though you thereby increased the wages of your labourers. We next began the woollen manufacture, but it was no sooner established than destroyed, for you prohibited§ the exportation of manufactured woollens to any other place than England and Wales, and this prohibition alone is reported to have driven 20,000 manufacturers out of the kingdom. The Navigation Act|| had unwittingly, but kindly, permitted all commodities to be imported into Ireland, upon the same terms as into England; but by an act¶ passed ten years afterwards, the exportation of any goods from Ireland into any of the plantations were prohibited, and as if that had not sufficiently crippled the benefits given by the Navigation Act, we were soon afterwards forbid to import any of the enumerated commodities from the plantations into Ireland.** This restriction too was much

* 8 Eliz. c. iii.

|| 12 Car. II., c. x.

† 13 and 14 Car. II., c. xviii.

¶ 22 Car. II., c. xviii.

‡ 18 Car. II. c. ii.

** 10 and 11 Gul. III. c. x.

§ 10 and 11 Gul. III. c. x.

enforced by subsequent acts, and the list of enumerated goods was much increased. I say nothing of your regulations respecting glass, hops, sail-cloth, &c.,* and other inferior barriers and obstructions to our commerce. We subsisted under all this, and under a drain also which has gradually increased upon us, by remittances to our own absentees, English mortgages, government annuitants, and other extra-commercial purposes, to the amount of half a million sterling annually; and though we retained no trade but in linen and provisions, the latter has been under a three years' prohibition, during which period we lost the principal market for our own beef, though three-fourths of our people were graziers. Many of us, indeed, carried on a clandestine trade, and it was essential to our support; but that too has been lately checked, first by the revolt of the colonies, and now by the war with France and Spain. Our annual remittances and debts to Great Britain now increase with our distresses; our leases when they expire are raised by the absentees; the drain is become greater than our means can supply . . . our circumstances are urgent, and your recent relaxations are unsufficient. We desire, therefore, a free trade, otherwise our distresses must if possible increase, and the conveniency of our ports will continue of no more use to us than a beautiful prospect to a man shut up in a dungeon."

* 15 Car. II. c. vii.

VI.

AGRARIAN TURBULENCE. THE LEINSTER COUNTIES. CUSTOM IN THE SOUTH. "THE GOOD OLD MODUS" REMEDY FOR WHITEBOYISM.

THE continued existence of agrarian troubles, in certain counties of Leinster, whilst the adjacent counties have been tranquil, is a phenomenon which deserves study. The usual statement is, that the cause of the exceptional turbulence lies in the exceptionally turbulent disposition of the peasantry. This is an answer which assumes much and solves nothing. The charge is general, the offence is special; there is no general depravity, nor are there faction-fights or other like bickerings to adduce as evidence of a character usually turbulent. The peasants even contrast favourably in that respect with their neighbours.

The land-question is the origin and end of their offending.

The following extract from the address of Chief Justice Whiteside, to the Grand Jury of King's County, 7th March, 1871, will serve to illustrate this fact:—"When I received the calendar of persons returned for trial at the assizes of this county, I did so with unfeigned satisfaction, because in turning over the pages of that calendar I found them blank throughout, save as to a single case on which I need not dwell.

The calender is one on which I should offer you my hearty congratulations, and I would be disposed to do so, if I had not to take notice of other circumstances, on which I feel bound to make some observations." These circumstances were contained in a document furnished him by the police, giving a narrative of agrarian offences. One farmer, a Catholic, had been shot at whilst proceeding to his church on a holiday, because "some twenty years ago, he (Cornelius Fox) took a piece of land that had been previously held by a person who had been evicted." Another Catholic farmer named Moran was attacked in the same way, whilst proceeding to his church on a Sunday. Another class of offences was that of threatening notices—and such warnings were always given before an assault. These notices related to labour (in one case) and to the land. One case mentioned was that of "a man, said the Chief Justice," "who was called on to give compensation to a man who had held his farm twenty years ago."*

These cases present typical offences of the counties involved, which are King's County, Meath, and Westmeath chiefly, Longford and Queen's County occasionally. They are alleged to be the work of an organized confederacy, the Ribbondmen (p. 136 n). Two things are, in especially, noteworthy respecting them:—

First, the agrarian secret legislators attack the Ca-

* *Freeman's Journal*, Dublin, 8th March, 1871.

tholic and farmer who does not obey their regulations, just as they attack the Protestant and landlord ; second, their opposition to eviction, conjoined with the fact that they insist upon a tenant giving compensation to his predecessor in the farm, are tantamount to a declaration that the so-called "Ulster Custom" should rule in these Leinster counties.

It is not necessary to refer further to the first characteristic, than to point out that, whether with the Catholic Whiteboys and Rockites of the south, or the Protestant Hearts of Oak and Hearts of Steel of the North, agrarian confederacies enforce their rules, irrespective of religious distinctions.*

* This statement, corroborated by the facts above-mentioned, may seem to be contradicted by the terms of a so-called "Ribbon oath," produced in the House of Commons, March 18, 1871. Mr. Monk, in bringing it before the House, asked 'whether a printed form of it had not been seized by the police in Westmeath.' It commenced thus : "By virtue of the oath I have taken I will aid and assist, with all my mind and strength, when called upon, to massacre Protestants, and cut away heretics, burn British churches, and abolish Protestant kings and princes, and all others, except the Church of Rome and this system : and by the virtue of the oath I have taken I will think it no sin to kill and massacre a Protestant whenever opportunity occurs." It concludes thus : "And I also feel bound to believe that there is no absolution to be had from the Pope of Rome, or any other authority *belonging to that Church*, or that which is to come, from any breach of the test."

This so-called oath, however, furnishes intrinsic evidence that it was forged by a person who did *not* belong to "*that church* ;" and who was so little conversant with Irish Catholic phraseology that he employs terms "Church of Rome," "Pope of Rome," which the vulgar amongst Irish Protestants habitually use, but which

The fact that the regulations of the secret agrarian legislators of these counties resolve themselves into a determination to carry out the practices known as the "Ulster Custom," is one of great historical importance in its relation to land tenure.

It has been pointed out in the foregoing history that this custom was once general over the country; that its local designation is only due to the fact that in Ulster it has been allowed to remain almost intact; and that well-defined traces of its existence are recorded from each of the other three provinces (pp. 65, 81). The tenants (one witness stated) "have rules

are regarded as offensive by Irish Catholics. Nor is the term "British Church" used among Irish Catholics as synonymous with Protestant Church. The peasantry use the words "chapel," "church," and "meeting-house," to designate the Catholic, Protestant, and Presbyterian places of worship respectively.

In reply to Mr. Monk, the Marquis of Hartington said that "a printed paper" containing a copy of the oath had been found in a house near Mullingar, in 1869, and added "there are considerable doubts as to whether it is a genuine Ribbon document, and if so it is supposed to be a copy of an obsolete oath."

It is a palpable forgery, perpetrated by some antagonist who, either through ignorance, stupidity, or uncontrollable hostility, could not make a plausible forgery. Nor is it the first of its kind. Some dozen years ago, an essentially similar "Ribbon oath," garnished with Scriptural texts, was published. But the author of it, as pointed out in the *Ulsterman* newspaper of Belfast, had been so incautious as to quote his texts from the Protestant version of the Bible—that version from which an Orangeman would naturally quote, but which a Ribbonman would never use. The forger has avoided texts this time.

The motive of the "discoveries" of such "Ribbon oaths" is very obvious. It is to be hoped that, owing to the increase of good will amongst Irishmen, these miserable devices have come to an end.

among themselves in the south, but it is not a recognized system in the south as in the north.”* There was greater confidence between landlords and tenants in the north, he remarked; adding that he considered the system an admirable one which should not be hindered (p. 83 n.).

But, in addition to this, these above-named Leinster counties have a special claim. Considered historically, with reference to circumstances moulding and forming their tenure practices, they are as much Ulster counties as if situated in the heart of the northern province. Plantations were made in these Leinster counties by King James, with the same rules and regulations, and involving the same consequences, as the Plantation which he established in Ulster. The recent debates in Parliament, and the appointment of a Secret Committee to consider the condition of these counties, render it desirable to illustrate the statements in the body of this work by additional evidences.

Carte, in his *Life of Ormond*, narrates the circumstances of the establishment of Plantations in these counties as follows :—“The King was so well pleased with the success of his Plantation in Ulster, and the publick approbation given of it by the representatives

* It is a significant fact that immediately after the passage of the Land Act, farms have been publicly sold in Tipperary, Kerry, and Wicklow, in accordance with the Custom. Nothing had been wanting but recognition.

of the whole nation, that he resolved to carry out the like in other parts where it was necessary for the improvement of the country, or the security of the Government." After showing how needful it was to pacify the country between Dublin and Waterford, he proceeds: "The King's title had about six years before been found to all the lands between the river of Arkloe and that of Slane, in the county of Wexford, and the former possessors thereof had all of them acknowledged this right, and made surrender of their lands into his hands. They amounted in all to sixty-six thousand acres, sixteen thousand five hundred of which, lying near the sea, he determined to dispose to an English colony, which was to be settled there, and to re-grant the rest in certain proportions to the old proprietors, under the like regulations and covenants as had been imposed on and submitted to by the planters of Ulster."*

Amongst these rules the following stand out prominently :—"They were not to alienate any of their lands, without a Royal license, nor *set them at uncertain rents, or for a less term than for twenty-one years, or three lives*, and their tenants were to live together in houses, not in cabbins, and to build their houses together in towns and villages."

"This plantation of *Wexford*," Carte proceeds, "was attended by that of the counties of *Leytrim* and

* Carte, *Life of Ormond*, vol. i., p 22.

Longford, and the O Carrols, O Molloyes, MacCoughlans, the Foxes, O Doynes, MacGeoghegans, and O Melaghlins' countries in the countries of the *King* and *Queen*, and *Westmeath*." These counties were, so to speak, still march-land, in which and beyond which the Irish were in great force; their pacification, therefore, was of much importance. The King, it is stated, desired to secure a permanent peace by a settlement which, whilst introducing some British, should yet recognize, establish, and content the Irish. They were, indeed, to be despoiled of some lands, but were to get recognition and perfect security in exchange. "He proposed." Carte says, "to do this in such a manner as the Irish themselves should find no grievance, but a reasonable satisfaction in it, and therefore ordered a proper provision to be made in the distribution of lands for widows and heirs of chiefs, for the lesser as well as the greater claimants, and what any of them wanted in the extent of ground which they possessed at the longest for life, was to be made up to them by the firmness of their title to what was re-granted them, and the descent of it to their heirs."

But that plague of dishonesty and avarice in the servants of the Crown in Ireland—which had always proved an obstacle to good government, and the irritable cause of revolt—showed itself here most virulently. "Even in Ulster," where the plantation had been conducted with special care, undertakers had violated their covenants, and flagrantly contemned the re-

gulations; "but it was *much worse* in the plantations of Longford, Wexford, King's County, and Leytrim" (and in other southern counties, we may add). "There not only the planters had neglected the performance of their covenants which obliged them to buildings, to particular improvements in sowing hemp, &c., to *set for long terms, to erect freeholds, and to create a certain number of fee-farmers* under them; but even the Commissioners authorized by the Royal authority to distribute their lands had not adhered so strictly to their instructions as it were to be wished. The King intended that no man should be divested of his possession without an *equivalent* being given him, and, therefore, directed that only a fourth part of the lands should be assigned to the British undertakers, and the other three parts be granted back to the natives, with estates of inheritance therein. . . . Yet in the county Longford the natives in general had scarcely a third part of their former possessions, either in number of acres, or in the value of profitable ground." The "art of admeasurement" was known and skilfully practised in the distribution of valuable lands and worthless wastes. Neither native nor previous colonist—neither Protestant nor Catholic were spared by the rapacious Commissioners. "Avarice and lust of rapine make no distinction of persons on whom they are to prey, so that we may the less wonder at the treatment of Tirlogh O'Ferral" (among others specified), "who, though his lands, after all

deductions made, did, according to the King's directions, entitle him to a freehold, was stripped of all, without one acre being assigned him in lieu thereof, notwithstanding that he was the only Protestant of his name."

Yet it is stated that "these grievances of particular persons did not prevent the general good." In other words, plantations were established and a settlement of tenantry made, as in Ulster, but under more rapacious and unscrupulous lords. Circumstances gave power to the peasants, and in the troubled times which followed, their lords were well content to recognize customs which, in securing to them a "defensible tenantry," would protect their lives, and provide them with food, raiment, and money.

An enumeration of the various counties in which special plantations had been made, under Elizabeth and James I., is to be found in the statute 10 Car. I. s. 3. It recites that "sundry plantations have been made in the several counties of Waterford, Corke, Limericke, Kerry, Tipperary, Wexford, Wickeloe, King's County, Queen's County, Westmeath, Leitrim, Longford, Tyrone, Armagh, Donegall, Farmanagh, Cavan, and Londonderry. . . . Upon all which divers patents have been passed and thereby very many undertakers and others of British birth, and very many natives of best quality have been there planted and settled."

It is not astonishing, after what has been said, that

the so-called "Ulster Custom" should have been maintained, either openly or secretly, in all of these counties. Neither can it excite surprise that, when attempts to infringe upon it or uproot it have been made in the midland and southern counties, these attempts should have been encountered by resistance, and accompanied by the formation of peasant leagues and by agrarian troubles.* Lord Lurgan's agent, and other witnesses, stated before the Devon Commission that such results would certain follow any attempt to destroy the custom of the Ulster counties, and their opinions can rest on such precedents as the existence and conduct of the "Hearts of Oak" and "Hearts of Steel."

The contrasts which have occasionally been drawn between the characters of the peasants of Ulster and those of the other provinces are, therefore, delusive. In North and South, like causes produce like effects. If the peasants of Ulster have long been peaceable, it is because they have long enjoyed security; if the peasants of the southern provinces have committed agrarian offences, it is because they suffered from continual aggressions made upon their ancient rights. For a time, in the pre-"Emancipation" period, the

* Of three persons tried for sending threatening notices at the assizes of Carlow County, March, 1870, one had a "native" name, while the other two had "colonial" names. With the exception of these agrarian offences, Carlow was declared by the Judge to be a "model county."

tenantry in the North and South were so placed as to render a comparison possible, though even then the general identity of religion between landlords and tenants in Ulster was a point in favour of the latter.

But in 1780 Arthur Young wrote not less favourably of the southern than of the northern peasants. He denounces the great graziers and "cow-keepers" of Limerick, Tipperary, Clare, Meath and Waterford, who monopolized tracts of rich land worth from £3,000 to £10,000 a-year, which they kept as weedy and as waste as the mountains of Kerry. "In Ireland these men are as errant slovens as the most beggarly cottar." They were slothful and dissipated. It was otherwise with the small farmers in the since "disturbed" counties. "In the arable counties of Louth, part of Meath, Kildare, Kilkenny, Carlow, Queen's, and part of King's and Tipperary, they are much more industrious. It is the nature of tillage to raise a more regular and animated attention to business." In Cork, Wicklow, Longford, and all the mountainous countries, both tillage and pasturage prevailed. Partnerships were frequent, owing to the poverty of the tenants, who "have more industry than capital."* But, he adds, "in the mountainous districts I saw instances of greater industry than in

* "Several very considerable landlords have assured me that the little occupiers were the *best* pay they had on their estates; and the intermediate *gentlemen* tenants by much the *worst*."—Young, *Tour in Ireland*, vol. ii. part ii. s. v.

any other part of Ireland. Little occupiers, who can get leases of a mountain side, make exertions in improvement which, though far enough from being complete or accurate, yet prove clearly what great effects encouragement would have among them.* Their want of true capital could not be inferred from their lack of money. They were poor in the common acceptance of the word: "but it is from the whole evident that they are uncommon masters of the art of overcoming difficulties by patience and contrivance. Travellers who take a superficial view of them, are apt to think their poverty and wretchedness, viewed in the light of farmers, greater than they are. Perhaps there is an impropriety in considering a man merely as the occupier of such a quantity of land, and that instead of the land, his capital" (? capacity) "should be the object of contemplation. Give the farmer of twenty acres in England no more capital than his brother in Ireland, and I will venture to say he will be much poorer, for he would be utterly unable to go on at all."†

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* *Ibid.* s. v. In section vi. t. "Food," he remarks: "The idleness seen among many when working for those who oppress them, is a very contrast to the vigour and activity with which the same people work, when themselves alone" (? chiefly) "reap the benefit of their labour. To what country must we have recourse for a stronger instance, than lime carried by little miserable mountaineers, thirty miles on horses' backs to the foot of their hills, and up the steepes on their own."—Young, *Tour in Ireland*, vol. ii., part ii., s. vi.

† *Ibid.*, vol. ii., part ii., s. v.

At that time the Irish Catholics were excluded from trades, so that when Young refers to the Ulster weavers, he indicates the non-Catholic colonists, whose fathers came from Scotland and England. "View the north of Ireland," he writes, "you there behold a whole province peopled by weavers; it is they who cultivate, or rather beggar the soil, as well as work the looms; agriculture is there in ruins; it is cut up by the root; extirpated; annihilated; the whole region is the disgrace of the kingdom; all the crops you see are contemptible; are nothing but filth and weeds. No other part of Ireland can exhibit the soil in such a state of poverty and desolation."* On the other hand, it may be pleaded that the general prevalence of the arts of weaving, spinning, hackling, hand-scutching, and dressing flax, was of so much benefit to the people, that the comparative neglect of agriculture was almost atoned for.

Oppression was the cause of agrarian outbreaks, north and south, but according to Young the northern Protestants—really revolting against less harsh despotism—had scarcely any excuse.† "In England," he says, "we have heard much of whiteboys, steel-boys, oak-boys, peep-of-day boys, etc.;" adding, "all but the whiteboys were among the manufacturing Protestants of the north. . . . From the best intelli-

* Young, *Tour*, vol. ii., part ii., s. xix.—Linen Manufacture.

† *Ibid.*, s. vi.—Oppression.

gence I could gain, the riots of the manufacturers had no other foundation,* but such variations in the manufacture as all fabrics experience, and which they had themselves known and submitted to before. The case, however, was very different with the whiteboys, who, being labouring Catholics, met with all those oppressions I have described."

These oppressions were manifold. The treatment generally was harsh in the extreme; compared with the Irish labourers, the labouring poor in England seemed to "reign as sovereigns." The remnant of old manners, the abominable distinction of religion, the conduct of the little country gentlemen, "or rather vermin of the kingdom," made their condition most mortifying. The landlord of an Irish estate inhabited by Roman Catholics, was a despot, whose will was the sole law. "To discover what the liberty of a people is, we must live among them, and not look for it in the statutes of the realm: the language of the written law may be that of liberty, but the situation of the poor may speak no language but that of slavery; there is too much of this contradiction in Ireland, a long series of oppressions, aided by many very ill-judged laws, have brought landlords into the habit of

* As to this he was misinformed, for there were agrarian causes, as has been shown (p. 130). It is to be noted, however, that the "strikes" which occurred in Ireland, took place at a time when the "native" Irish were excluded from manufactures; consequently it is most unfair to adduce them in reproach of the present peaceful artizans, as some have done.

exerting a very lofty superiority, and their vassals in to that of an almost unlimited submission : speaking a language that is despised, professing a religion that is abhorred : and being disarmed, the poor find themselves in many cases slaves even in the bosom of written liberty."

Instances occurred of a severe carriage to the poor such as was "quite unknown in England." Servants, labourers, cottiers, dare not decline to execute any order which the landlord should invent. Caning, horsewhipping, knocking down—these were ordinary things. A poor man, if he lifted a hand in his own defence, "would have his bones broken." As in France before the Revolution, landlords neither respected the chastity nor the wifehood of the cottier's family ; and this, indeed, was "a mark of slavery that proves the oppression under which such people must live." The poor tenant might even be murdered with impunity. "Nay, I have heard anecdotes of the lives of people being made free with without any apprehension of the justice of a jury. But let it not be imagined that this is common ; formerly it happened every day, but law gains ground."

The most careless traveller might see "whole strings of cars whipt into a ditch by a gentleman's footman, to make way for his carriage ; if they are overturned, or broken in pieces, no matter, it is taken in patience ; were they to complain, they would perhaps be horse-

whipped." The culprits, besides, would be the only judges of the offence.

"The execution of the laws lies very much in the hands of the justices of the peace, many of whom are drawn from the most illiberal class in the kingdom." No poor man dare lodge a complaint against a gentleman, "or any animal that chooses to call itself a gentleman;" it would be regarded as an insult that should be expiated by a duel,* if any magistrate did

* Ireland has suffered not only directly from the tyranny, but indirectly from the character of these, her oppressors. Just as Irish artizans, in the present day, have been held up to odium because the ascendancy-artizans, who excluded their Irish fathers from all trades, were addicted to riots and strikes, so likewise to Irishmen as a people are the rakehelly faults of their petty despots attributed. The stock characters of Irish novels, prepared for the English market by Lever in his later days, and by his poor imitators, represent as the living types of a nation the worst specimens of a class now extinct, which was that nation's worst enemy. "I must now come," wrote Young, "to another class of people, to whose conduct it is almost entirely owing that the character of the nation has not that lustre abroad which I dare assert it will soon very generally merit; this is your class of little country gentlemen; (middle-) tenants who drink their claret by means of profit-rents; jobbers in farms; bucks; your fellows with round hats edged with gold, who hunt in the day, get drunk in the evening, and fight the next morning. I shall not dwell on a subject so perfectly disagreeable, but remark that those are the men among whom drinking, wrangling, quarrelling, fighting, ravishing, &c., &c., &c., are found as in their native soil; once to a degree that made them the pest of society. They are growing better."—Young, *Tour*, vol. ii., part ii., s. xvii. They formed the Donnybrook element.

At home the Irish people, whom they oppressed with rack-rents and penal laws, had then to worship their God in caves, and to seek education in the wilds at the risk of liberty or life. Abroad, they founded colleges, and earned a distinguished name in the armies of France, Austria, and Spain.

grant one. "Where manners are in a conspiracy against law, to whom are the oppressed people to have recourse?"

Such were some of the oppressions which, in addition to rack-rents and duty-work, helped to drive the oppressed peasants into secret confederations. It needed but some additional or unwonted act of tyranny to break their patience.

The labouring Catholics of the south "would probably have continued in full submission," Young writes, "had not very severe treatment in respect of tythes, united with a great speculative rise of rents about the same time, blown up the flame of resistance." It became a kind of *Jacquerie*. The agrarian insurgents were too often guilty of atrocious actions. Young thus proceeds to describe the manner in which they were met, and to make his own instructive comment: "Acts were passed for their punishment which seemed calculated for the meridian of Barbary; this arose to such a height, that by one they were to be hanged under certain circumstances without the common formalities of a trial; which, though repealed the following session, marks the spirit of punishment; while others remain yet the law of the land that would, if executed, tend more to raise than quell an insurrection. From all which it is manifest that the gentlemen of Ireland never thought of a radical cure, from overlooking the real cause of the disease, which in fact lay in themselves, and not in the poor wretches

they doomed to the gallows. Let them change their own conduct entirely, and the poor will not long riot.

“Treat them like men who ought to be as free as yourselves ; put an end to that system of religious persecution which for seventy years has divided the kingdom against itself ; in these two circumstances lies the cure of insurrection ; reform them completely, and you will have an affectionate poor instead of oppressed and discontented vassals.

“A better treatment of the poor in Ireland is a very material point to the welfare of the whole British Empire. *Events may happen which may convince us fatally of this truth ;* if not, oppression must have broken all the spirit and resentment of men. By what policy the English Government can for so many years have permitted such an absurd system to be matured, is beyond the power of plain sense to discover.”*

Eighteen years after this unheeded warning an almost general insurrection burst out.

The acts of oppression enumerated, whilst impoverishing or personally injuring the tenant, did not directly assail tenure-rights. That was not an eviction period. Accordingly, it is not surprising to find that tenant-right customs were to be found south and north at the commencement of the present century. The manner in which these customs grew up has been already explained ; their identity may be further illustrated by the following examples.

* Young, *Tour*, vol. ii., part ii., s. vi. Oppression.

At the time in question, be it remarked, the term "Ulster Custom" does not appear to have been known, for the simple reason apparently that the practices which constitute it were not provincial, but formed the custom of the country—the "old equity of the kingdom," or as it is here called, the "*good old modus*," the "*tenant's right*."

In the following passage, its existence upon the Newtown-Stewart and Aughentaine estates of Lord Mountjoy is described by the author of the "Statistical Survey of the County Tyrone."

"In these estates for many years back leases of no more than twenty-one years could be given by the two last proprietors; yet notwithstanding the tenants went on with spirit and industry in the improvement of their farms—*this they did from the confidence they had in a good old modus*—namely, that their land would never be given to another tenant, so long as they were able and willing to pay a reasonable raised rent. . . . It is now in contemplation to give leases of lives and thirty-one years, which no doubt will be found a more powerful inducement for the tenants to improve their farms than the present system of twenty-one years."* "The system of giving long leases (suppose thirty-one years or three lives) is certainly the best mode in this country, as there is seldom found that degree of confidence between landlord and tenant

* M'Evoy, *Statistical Survey of Tyrone*, chap. 4, s. i.

which in England has been so happily experienced for ages back.”*

In a Leinster county, one of those named in the Act of Charles I., the existence and strength of this “good old modus” are more vividly depicted. “On the whole of my Lord Fitzwilliam’s property,” writes the author of the survey of Wicklow,† what is called in England *tenant’s right* is universally respected;‡ a third person seldom interferes. *The former occupier, or his heir-at-law, or even his devisee, is supposed to have a tenant-right to the premises.* He is content to pay a reasonable advance for the improved state at which his farm may have arrived, *deductions being always allowed for permanent improvements*. This is easily and amicably adjusted between his lordship’s agent and the tenant with a reference to Lord Fitzwilliam.

“The adherence to this custom of tenant-right, according to the excellent author of the Enquiry into the Wealth of Nations, so favourable to the yeomanry, has contributed more to the present grandeur of England than all their boasted regulations of commerce taken together.

* *Ibid.*, s. 2.

† Fraser, *General View of Wicklow*, 1801, pp. 118–120.

‡ The term “tenant-right” has been so much used in Ireland that it became naturalized; this statement of its origin will surprise many. But though an English term it served to designate a custom common to two countries, in one of which it was respected by the lords, in the other spurned.

"It is by the tenants having the fullest confidence in the continued adherence to this custom, that on leases of one life, or twenty-one years, more spirited improvements are made on this estate, notwithstanding its disadvantages of soil and distance from manure, than on any other estates of non-residents in this country. These circumstances of prosperity and improvement are by no means confined to this part of the Rockingham estate, but from the same excellent principle being extended to all parts of the property, that of an invariable adherence to *tenant-right*, the same spirit of improvement is everywhere exhibited." Again, he writes of the tenants, "who by the custom of the estate have their farms consequent of their improvements, almost as certain as if they had been under a covenant of being renewable for ever."

Wherever the custom was violated, wherever the oppression became excessive, there agrarian resistance surely showed itself.* Wakefield in 1812, bears the

* In 1862, the following proof was unconsciously given that modern Ribbonmen endeavour to maintain these ancient custom-rights :

Lord Rosse : "They always say that a man ought to pay his rent and submit to eviction if he make default. But the practice scarcely follows the theory. It is generally prudent, on the part of the incoming tenant, to buy out his predecessor. In fact, there is a constant endeavour to introduce" (*recte*, to preserve) "*tenant-right*, a system which we always oppose, as it tends to make the tenant the real proprietor, and the landlord the owner of a mere ground-rent."—Senior, *Journals, Conversations, and Essays relating to Ireland*, vol. ii. p. 215.

In reality, the theory and practice are those of the "custom," as now followed in Ulster—there the tenant may be evicted for non-payment, yet he has the right of sale. The arrears due are simply de-

same testimony as Young in 1780. He heard of many, and saw some glaring instances of the tyranny and oppression to which the poorer classes "are subjected." As one instance, at Carlow races, he says, "I saw a poor man's cheek laid open by the stroke of a whip. He was standing in the midst of a crowd, near the winning post; the inhuman wretch who inflicted the wound was a gentleman of some rank in the county. The unhappy sufferer was standing in his way, and, without requesting him to move, he struck him with less ceremony than an English country squire would a dog. The people dared not even murmur. Twenty magistrates were present, but none would interpose."*

ducted for the landlord from the proceeds. Historical facts prove that the peasants have been making "a constant endeavour" to maintain old rights and customs. The improbability of peasants imagining, forming, and combining to "introduce," a perfectly new and strange system of tenant-right, does not appear to have struck any-one.

Striking as the foregoing quotation is, as a piece of evidence, it becomes still more instructive when taken in connection with what follows. Lord Rosse, having mentioned the turbulent character of "the lower people of this country":—

"How far," I asked, "does what you call this country, extend?" "It takes in," he answered, "King's County and Queen's County, and Tipperary, Westmeath, Roscommon, and Longford—in short, the centre of the island."—*Ibid.*, p. 220.

Thus Lord Rosse, having unwittingly helped to prove that the latter-day ribbonmen are not radicals or revolutionists, but strict conservatives, completes the case by showing that their regulations are almost continuous with those midland—those plantation counties—counties in which the custom had been formerly firmly established.

* Wakefield, *Account of Ireland*, vol ii., p. 773.

Riding out with a magistrate in Tipperary one day, Wakefield and his companion, Mr. Bagwell, met "a country gentleman, a Mr. Sparrow, who resided in the neighbourhood, accompanied by three horse soldiers. He informed Mr. Bagwell that his life had been threatened; that a farm house in his own occupation had the night before been burned to the ground; and that from letters he had received he did not think it safe to ride out alone." On investigation, it was found that Mr. Sparrow, wishing to get possession of a tenant's farm, had persuaded him to surrender his lease under promise of receiving another for a new farm, and then cheated him. Wakefield saw that his companion—the political antagonist of the mass of the people—could ride about freely, and was received with particular civility. He adds, "I am persuaded therefore, from these circumstances, that their discontent and irregularities are not the consequences of depraved habits or public grievances, but are solely owing to an indignant sense of private injuries which they have no other means of redressing."*

* Wakefield, *Account of Ireland*, vol. ii., p. 770. Take also this suggestive extract from Lord Charlemont:—"When we consider that the very same district has been for the very long space of seven and twenty years liable to frequent returns of the same disorder into which it has continually relapsed, in spite of the violent remedies from time to time administered by our political quacks, *we cannot doubt but that some real, peculiar, and topical cause must exist*; and yet neither the removal nor even the investigation of this cause has ever once been seriously attempted, while laws of the most sanguinary and unconstitutional nature have been enacted."—Hardy, *Life of Lord Charlemont*, pp. 87-8.

Wakefield, like Young, mentions the turbulence of the Ulster plantation. After referring to the acts of brutality proved against an Antrim magistrate, "which could not have been expected from a magistrate in Siberia," he thus proceeds: "The humbler orders have a strong propensity to riotous meetings, and regulate their conduct by rules of their own making, as is exemplified on many occasions when they set law, good order, and decency at defiance. Thus it happens that they frequently attempt to redress private wrongs, or revenge family insults in their own summary way."*

If, therefore, the northern counties have long enjoyed peace, it cannot be pretended that it is because their peasants are naturally more patient, but because they have not been provoked. The evictions that revenged "Emancipation," (so called) did not touch them, while the southern counties were ravaged and desolated.† Besides, the configuration and climate of the north helped to save its peasants from the greed of

* Wakefield, *An Account, etc.*, vol. ii., p. 739. In 1858, an agent who was "squaring farms" in Galway said: "I could not have done it if I had had to deal with a northern population. The southern and western people are far more tractable."—Senior, *Journals*, vol. ii., p. 83.

† Even in 1862, certain midland lords spoke resentfully of what they called "the revolt of the tenantry," in voting for emancipation and Catholic candidates. They confessed, also, that they would have swept the country as bare as the Sutherland estates, only for the opposition of the tenants, organized as Ribbonmen. See Senior, *Journals, etc.*, vol. ii., Visit to Ireland in 1862.

graziers, who strove to overrun the level midland and southern shires.

Some threatening notices of the present time in the midland counties, refer to events which occurred twenty years ago, and require that the occupant of to-day shall give compensation to the tenant he then displaced. Twenty years brings us close to the famine-period, when the tenantry were driven out at the point of the bayonet, with a remorseless cruelty which has never been paralleled in any time nor in any country. The memory of such deeds lasts long. The Transplantation of Cromwell was a merciful and considerate act in comparison with these ruthless devastations; for their authors spared neither babes at the breast, pregnant mothers, nor dying men, but from the homes their fathers had erected, thrust all forth, and not unfrequently in the midst of rigorous winters, and beneath pitiless storms of snow and sleet. With the earliest return of strength, it was inevitable that agrarian confederacies should revive, more especially if by renewed evictions the destruction of the "good old modus" were persisted in, and all improvements made by the tenants confiscated "feloniously" to the landlord's use.* The following statement of an eye-

* Lord Clarendon, British Minister for Foreign Affairs, at the annual meeting of the West Herts Agricultural Society, September 27, 1869, said: "They were practical men whom he was addressing, and he would ask any gentleman present, if he were to take a farm at will, upon which the landed proprietor never did, and never intended

Witness, the Catholic Bishop of Meath, is extracted from his pastoral of March, 1871, in which he explains the immediate causes of Ribbonism, whilst condemning its recent manifestations. Referring to an eviction which he beheld in the first year of his ministry, he says:

“It was a cruel and inhuman eviction, which even still makes our hearts bleed as often as we allow ourselves to think of it.

“Seven hundred human beings were driven from their homes in one day and sent adrift upon the world, to gratify the caprice of one who, before God and man, probably deserved less consideration than the last and least of them. And we remember well that there was not a single shilling of rent due on the estate at the time except by one man;* and the character and acts of that man made it perfectly clear that the agent and himself quite understood each other.

“The crow-bar brigade, employed on the occasion

to do anything, and were to build upon the farm a house and homestead, and effectually drain the land, and then be turned out on a six months' notice or less, would any language be strong enough to condemn such a *felonious act* as that?” (Hear, hear.) This power “was too often exercised and ought to be abated.”

* For the purpose of obtaining English sympathy and condonation, the apologists for extermination generally represent that the tenant would “pay no rent,” and that it was an object of the Ribbonmen to hinder the landlord of his rent. Quite the contrary is the case: “There is nothing political or religious” he (L.) added, “in the Ribbon code. It is simply agrarian—it recognizes the obligation on the part of the tenant to pay rent, but no other obligation.” Senior, *Journals*, vol. ii., p. 215.

to extinguish the hearths and demolish the homes of honest, industrious men, worked away with a will at their awful calling until evening. At length an incident occurred that varied the monotony of the grim, ghastly ruin which they were spreading all around. They stopped suddenly, and recoiled panic-stricken with terror from two dwellings which they were directed to destroy with the rest. They had just learned that a frightful typhus fever held those houses in its grasp, and had already brought pestilence and death to their inmates. They therefore supplicated the agent to spare these houses a little longer; but the agent was inexorable, and insisted that the houses should come down. The ingenuity with which he extricated himself from the difficulties of the situation, was characteristic alike of the heartlessness of the man, and the cruel necessities of the work in which he was engaged. He ordered a large winnowing sheet to be secured over the beds in which the fever victims lay—fortunately they happened to be perfectly delirious at the time—and then directed the houses to be uprooted cautiously and slowly, because, he said, ‘he very much disliked the bother and discomfort of a coroner’s inquest.’ I administered the last sacrament of the Church to four of these fever victims next day; and save the above-mentioned winnowing-sheet, there was not then a roof nearer to me than the canopy of heaven.

“The horrid scenes I then witnessed I must re-

member all my life long. The wailing of women ; the screams, the terror, the consternation of children ; the speechless agony of honest, industrious men, wrung tears of grief from all who saw them. I saw the officers and men of a large police force, who were obliged to attend on the occasion, cry like children at beholding the cruel sufferings of the very people whom they would be obliged to butcher had they offered the least resistance. The heavy rains that usually attend the Autumnal equinoxes descended in cold, copious torrents throughout the night, and at once revealed to those houseless sufferers the awful realities of their condition. I visited them next morning, and rode from place to place administering to them all the comfort and consolation I could. The appearance of men, women, and children, as they emerged from the ruins of their former homes—saturated with rain, blackened and besmeared with soot, shivering in every member from cold and misery—presented positively the most appalling spectacle I ever looked at. The landed proprietors in a circle all round—and for many miles in every direction—warned their tenantry, with threats of their direst vengeance, against the humanity of extending to any of them the hospitality of a single night's shelter. Many of these poor people were unable to emigrate with their families ; while at home the hand of every man was thus raised against them. They were driven from the land on which Providence had placed them ;

and, in the state of society surrounding them, every other walk of life was rigidly closed against them. What was the result? After battling in vain with privation and pestilence, they at last graduated from the workhouse to the tomb; and in little more than three years nearly a fourth of them lay quietly in their graves.*

"The eviction which I have thus described, and of which I was an eye-witness, must not be considered an isolated exceptional event which could occur only in a remote locality, where public opinion could not reach and expose it. The fact is quite the reverse. Every county, barony, poor-law union, and indeed

* The testimony of Edward Senior, Poor Law Commissioner, illustrates the relations of landlords and priests to the poor. The relief given by the Irish cultivators was generous and constant; they proved their sympathy at their own cost. This was with them a national custom as well as a religious duty.

"Nothing but the determination of the English that Ireland shall have a poor-law could have passed the law or could maintain it: they alone sympathise with the Irish poor. The Irish themselves, *that is*, the higher and middle classes, know nothing of the poor and care nothing for them. The priest, indeed, knows them, for he often has been one of them; but those who pay and those who administer the poor rate, generally Protestants, hate the poor the more as the *protégés* of the priest. The Irish gentry, too, are generally tories; and an Irish tory is a very different person from an English tory. He is a real tory—an enemy to everything popular—and hates the Boards of Guardians as popular assemblies. If the grand juries and the ratepayers could do so, they would close half the workhouses. 'And resort,' said I, 'to out-door relief?' 'No,' he said, 'to no relief at all except the relief given before the law of mendicancy, relief which cost perhaps more than the poor rate, but did not fall on *them*—which was given by the pauper who lived in his cabin.'"—Senior, *Journals*, vol. ii., p. 119. 1858.

every parish in the diocese, is perfectly familiar with evictions that are oftentimes surrounded by circumstances and distinguished by traits of darker and more disgusting atrocity. Quite near the town in which I write, and in the parish in which I live, I lately passed through what might be characterised as a wilderness, in which, as far as the eye could reach, not a single human being, not the vestige of a human habitation, was anywhere discernible. It was only with great difficulty, and much uncertainty too, that I was able to distinguish the spot on which, till lately, stood one of the most respectable houses of this parish. A few miles farther on I fell in with the scene of another extensive clearance, in which the houses that had sheltered three hundred human beings were razed to the ground some few years ago. That same proprietor desolated, in an adjoining parish, a densely-populated district, by batches of so many families in each of a series of successive clearances. Seventeen families first batch.

“But there are other public unquestionable facts which demonstrate the enormous injustice of these clearances without wearying ourselves with their disgusting details.

“From the year 1851 to 1861 there was a decrease of 51,000 in the population of Meath and Westmeath alone; that is to say, more than one-fifth of the population of these two counties vanished completely in ten years. The census reports from 1861 to 1871 have

not yet been published; but there are solid reasons for fearing that they will reveal a still greater ratio of decrease. Now, in these two counties there are no manufactories, and no branch of industry worth mention. With the exception of some few score who earn their bread within doors, the population is entirely and purely agricultural, passionately attached to the soil and to the locality they were born in. The census reports therefore demonstrate the existence, in the midst of us, of some permanent evil power, which in these two counties alone has actually destroyed, and is actually destroying us still, in the frightful ratio of more than 50,000 in every ten years.

“ A sentence of eviction from the land (in a state of society in which, without the land, it is impossible to support life) is tantamount to a sentence of slow but certain execution; and hence it is very difficult to distinguish in thought between the system of wholesale clearances—that has been proved to prevail in these two counties—and a system of wholesale murder.

“ Unjust laws have divided us into a class on the one side, and the vast mass of the people on the other. The class were armed with absolute, unlimited, and irresponsible powers; and, as they used these powers in utter contempt of justice and humanity, the people necessarily became their victims. And the very governments that thus armed the class, and hurled them with bitterest animosity against the masses—to exterminate and destroy them—ex-

pressed themselves shocked, horrified, and scandalised, because the people did not submit themselves to the operation peaceably and without a murmur.* They imputed to a detestable perverseness of the Celtic character the Celt's unwillingness to suffer himself to be robbed and murdered unresistingly. But surely the worm only obeys his instinct when he turns upon the camel that treads upon him.†

“When the people saw themselves given up to their destroyer by the very authorities that were bound to protect them, they instinctively fell back on their own resources, and turned upon their oppressors with the energy and frenzy of despair. The very instincts of Nature taught them to collect their scattered energies into confederations which would organise, develop, and utilise them. In fact, the situation was virtually a state of civil war between the nation and a class—the people keeping purely on the defensive.

* See p. 146. Note from Wakefield.

† As Irish Catholic priests have been frequently censured for thus expressing themselves, this quotation will show that an English Protestant layman furnished a precedent:

“It is an axiom in politics that the great majority of a people never rise into insurrection, or become rebels, without sufficient reason; the disaffected few possess not the influence to increase political hatred to such a degree as to cause a general movement in opposition to the government; this effect can only be produced by a government itself, and this circumstance is the best apology for the people, if not their justification. We natives of England ought to be very circumspect in our condemnation of the principles of resistance to oppression, for of all nations upon earth we have most benefited by the exercise of such right”.—Wakefield, *An Account*, vol. ii. p. 838.

"Ribbonism, as an organisation, is the necessary and logical result of bad laws and of the tyranny of bad landlords. If it was the injustice of bad landlords that first created it, so it was their cleverness and sagacity to advance their own interests that nurtured and fostered it into the pernicious energy and activity that all good men now deplore. Whenever Ribbonism became really dangerous and formidable they purchased up its most influential members; and through the exertions of these hired traitors—or the secret information supplied by them—they were enabled to carry out all their projected clearances with increased security and confidence.* It is a matter of notoriety that two of the most cruel and extensive exterminators in this diocese had been centres of Ribbonism in their respective districts while carrying their inhuman clearances through."

The political and agricultural causes have already been described (Chap. x.) of that frightful eviction-war, some of whose episodes are faithfully described by the Catholic Bishop of Meath.


The effects of the sanction given by modern law to the extermination of one class of tenants by another class are manifold. These only need be mentioned. Every government which sanctions such ravages, loses citizens and makes foes; its policy converts into enemies large masses of that class of subjects, who are

* A similar statement is made in Holland's *Landlord in Donegal*.

by nature and circumstances the best soldier element of the population. The attempted insurrections in Ireland and the permanent existence in the United States of an armed and hostile Irish population sufficiently attest this. Next, the country, weakened of men and crowded with herds and flocks, presents a double temptation to an adventurous foreign enemy.* Thirdly, the remnants of the population retained upon the land in a de-graded position, as cowherds and labourers, having no longer the responsibility of property (however small) are likely to cherish feelings of revenge, and apt to combine in social leagues or agrarian "trades-unions."

* The term, "an armed nation" has been revived, in reference to the Franco-Prussian war. Of old, under the feudal system, a freehold alone was a free man's tenure; freeholders defended the state. Serfs, tenants for short terms, villeins-at-will, escaped war service. A State where the cultivators are freeholders might consistently call them to arms; where, however, the cultivators have but villein tenures, they should have villein exemptions also.

Wakefield said: "After having seen the greatest part of Europe subjugated through a blind confidence in standing armies, can there be a question that these bulwarks are of little avail, when opposed to 'an armed nation.'" That Ireland should be organized thus, so as no longer to be a temptation to invaders, but a defence against them, serious reforms were needed. "No people in the world are more distinguished for attachment to their native soil; and were they equally attached to the government, it would be secure from any external force that might be brought against it. The system which ought to be pursued is obvious; let the people be admitted to a participation in the blessings of the Constitution; allow them to enjoy equal rights and equal privileges; abolish all odious distinctions; extend the protection of the laws to every rank of society; cause them to look up to their superiors as benefactors, and all will be accomplished."—Wakefield, *An Account*, vol. ii., p. 825.



Rome furnishes us at once with the example of how ~~ow~~ a State was raised to greatness by the efforts of small ~~all~~ independent cultivators, and with the lesson of how i ~~i~~ it fell when land-monopolizers had greatly eradicated ~~ed~~ these, and replaced such free holders by slave work ~~sk~~men.

Soon after the Christian era we find that Latin wri- ~~i~~ters looked back with regret to the happy times when ~~en~~ farms were small. Columella remarks that Cincinn- ~~a~~tus, when called to the Dictatorship, possessed but ~~at~~ four jugera (say acres) to which he gladly returned. ~~h~~C. Fabritius and Curius Dentatus, one of whom had ~~d~~ expelled Pyrrhus, and the other subjugated the Sa- ~~a~~bines, were contented with their seven jugera. In ~~m~~tilling and fighting they displayed equal industry. ~~—~~ That was the land system which produced a hardy ~~v~~and vigorous race, and made Rome great. Cicero, ~~—~~ in his oration for Sextus Roscius declares it, at a time ~~—~~ when some considered the name of peasant to be a ~~—~~ name of disgrace :—

“ At hercule, majores nostri longe aliter et de illo, et de cæteris talibus viris existimabant. Itaque ex minima, tenuissimaque Republica maximam et florentissimam nobis reliquerunt. Suos enim agros studiose colebant ; non alienos cupide appetebant: quibus rebus, et agris et urbibus, et nationibus, rempublicam atque hoc imperium, et populi Romani nomen auxerunt.” Seneca and Columella and Pliny alike deplore, as ruinous to the Commonwealth, the extirpation of

the small farmers and the formation instead of large farms tilled by mere gangs of serfs or bothy labourers. The latter says that they ruined both Italy and the provinces: "Verumque contentibus latifundia perdidere Italiam, jam vero et Provincias, sex domini semissem Africæ possidebant cum interfecit eos princeps Nero."*

Sismondi well describes how, under this system, the State broke down before the irruption of the peasant-cultivators of the North.

With respect to the influence of evictions upon the remnant allowed to remain upon a property, it has frequently been asserted that the condition of an independent small farmer, subject to losses, is inferior to that of a dependent labourer, earning regular wages. Arthur Young however discerned that the condition of even an Irish cottier was in many respects above that of an English agricultural labourer. The recompense of labour, he observed, is the means of living. The Irish cottier got them in land and commodities; the English labourer in money. Statutes had been enacted to forbid the payment of the English poor in kind, but then these referred to payment in articles like bread, tea, soap, etc., not to a reward in land, which is far less open to fraud. The Irish cottier might indeed have ill luck with his cattle. "But to reverse the medal, there appear advantages and very

* Pliny, *Nat. Hist.*, l. xviii., c. 7.

great ones by being paid in land. He has plenty of articles of the most importance to the sustenance of a family—potatoes and milk. Generally speaking, the Irish poor" (cottiers) "have a fair bellyful of potatoes, and they have milk the greatest part of the year. What I would particularly insist on here is the value of his labour being food not money; food not for himself only, but for his wife and children. An Irishman loves whiskey as well as an Englishman does strong beer; but he cannot go on Saturday night to the whiskey-house, and drink out the week's support of himself, his wife, and his children, not uncommon in the ale-house of the Englishman. That the Irishman's cow may be ill-fed is admitted, but ill-fed as it is, it is better than the no-cow of the Englishman; the children of the Irish cabin are nourished with milk, which, small as the quantity may be, is far preferable to the beer or vile tea which is the beverage of the English infant; for nowhere but in a town is milk to be bought." The bread and cheese are locked up in England from the children; in Ireland, they eat the potatoes all day long. "In England complaints rise even to riots when the rates of provisions are high, but in Ireland the poor have nothing to do with prices; they depend not on prices but crops of a vegetable very regular in its produce.

"Attend the English labourer when he is in sickness, he must then have resort to his savings; but those will be nought among nine-tenths of the poor of a

Country that have a legal dependence on the parish. Which therefore is best off—the Englishman supported by the parish, or the Irishman by his potatoe-bed and cow? They know little of the human mind who suppose that the poor man with his seven or eight shillings on a Saturday night, has not his temptations to be imprudent as well as his superior with as many hundreds or thousands a-year. He has his ale-house, his brandy-shop, and skittle-ground, as much as the other his ball, opera, and masquerade. Examine the state of the English poor, and see if facts do not coincide with theory; do we not see numbers of half-starved and half-clothed families, owing to the superfluities of ale and brandy, tea and sugar. An Irishman cannot do this in any degree; he can neither drink whiskey from his potatoes, nor milk it from his cow.”*

What Young urges as to the superiority of the cottager over the hired labourer, holds good in a stronger degree with respect to the independent small farmer.

Hugh Miller the distinguished geologist, speaking from experience, thus describes the effects of the large-farm system in Scotland at the present day: “The deteriorating effects of the large-farm system, re-

* Young, *Tour in Ireland*, vol. ii., part ii., s. vi. In 1862, Senior records a similar statement made to him by an English landlord in Ireland. The Irish cottier with his “pit of potatoes,” his “stack of turf,” and cow, was “frugal and provident,” and not, “as the Englishman constantly is, a week’s income in debt to the village shopkeeper.” — *Journals*, vol. ii., p. 175.

marked by Burns, is inevitable. It is impossible that the modern farm servant, in his comparatively irresponsible situation, and with his fixed wages of a meagre amount, can be rendered as thoughtful and provident a person as the small farmer of the last age, who, thrown on his own resources, had to cultivate his fields and drive his bargains with his lord full before him; and who often succeeded in saving money and in giving a classical education to some promising son or nephew, which enabled the young man to rise to a higher sphere of life.* Farm servants, as a class, must be lower in the scale than the old tenant-farmers, who wrought their little farms with their own hands, but it is possible to elevate them far above the degraded level of the bothy; and, unless means be taken to check the spread of the ruinous process of brute-making which that system

* This is especially true of Ireland, where the most sanguinary penal laws against education failed to crush the love of learning. Young found the "ditches full" of pupils—at a time when it was a crime against the law for Irish Catholics to teach or learn. Weld wrote: "Amidst some of the wildest mountains of Kerry, I have met with schools, and have seen multitudes of children seated round the humble residence of their instructor, with their books, pens and ink, when rocks have supplied the place of desks and benches."—Weld, *Scenery of Killarney*, p. 167.

Wakefield, also, remarked: "The people of Ireland, are, I may say, universally educated. . . . I do not know any part of Ireland so wild that its inhabitants are not anxious, nay eagerly anxious, for the education of their children."—Wakefield, *An Account of Ireland*, vol. ii. p. 397. See also, Thackeray, *Irish Sketchbook*, Cork.

involves, the Scottish people will sink, to a certainty, in the agricultural districts, from being one of the most provident, intelligent, and moral in Europe, to be one of the most licentious, reckless, and ignorant.* The moral is self-evident.

The immediate cause of the recent outbreak of agrarian hostilities is to be found in the manner in which some of the landlords made preparations for the Land Act. The wrath which the announcement of that Act excited in the minds of several, may be judged from the fact that one or two were so carried away by their feelings of bootless rage, as to lose complete control of their senses and become maniacs. Others, in apprehension of the effects of its provisions, exercised to the utmost all the power given them by the unreformed law, of evicting under-tenants and confiscating to their own use their improvements—the fruit of the unrequited toil of generations. A desperate struggle was the consequence. Notices to quit, sentences of ejectment and confiscation, were met by “threatening letters,” and by the armed hand. The actual amount of strife was purposely exaggerated †

* Miller, *My Schools and Schoolmasters*.

† Sir Arthur Wellesley, afterwards Duke of Wellington, on his departure for the Peninsula, addressed a letter of instructions to Brigadier-General Lee, at Limerick. It is dated Cork, 7th July, 1808. The greater part of the letter is taken up with warning his correspondent not to be misled. The following is an extract:—

“This duty will be still more obvious, by a consideration of certain circumstances which exist in nearly all parts of Ireland. It frequently happens that disturbances happen only in a very small degree, and

by those who desired that a Coercion Act should back them up in this their latest exercise of that arbitrary and unjust power, to restrain which the Land Act had been prepared. Circumstantial accounts of fictitious "outrages," afterwards contradicted but to no purpose,—“threatening letters” addressed to himself by the forger,—these were the usual means employed

probably only partially, and that the civil power is fully adequate to get the better of them. At the same time, the desire to let a building to government for a barrack—the desire to have troops in the country, either on account of the increased consumption of the necessaries of life, or because the increased security which they would give to that particular part of the country would occasion a general rise in the value and rent of land, which, probably at that moment, might be out of lease; or, in some instances, the desire to have the yeomen called out on permanent duty—occasions a representation that the disturbances are much more serious than the facts would warrant. Upon these occasions, letter after letter is written to the commanding officer and to the government; the same fact is repeated through many different channels; and the result of an enquiry is, generally, that the outrage complained of is by no means of the nature or of the extent which has been stated. The obvious remedy for this evil, and that which is generally resorted to, is to call for informations on oath of the transactions which are complained of. But this remedy is not certain, *for it frequently happens that informations on oath are equally false with the original representations.* . . . It frequently happens that the people who do commit outrages and disturbances have reason to complain. . . . It is possible that grievances may exist in the County Limerick; provisions may be too dear, or too high a rent may be demanded for land, and there may be no poor-laws, and the magistrates may not do their duty as they ought by the poor.”—Wellington, *Civil Correspondence and Memoranda*, Ireland, 1807-1809, p. 407.

Wakefield, in 1812, (See p. 146, n.) commented on the conduct of the magistracy in still stronger terms.

Nassau W. Senior, another Englishman, writing in 1862, in his

in such cases, and they were now again revived.* They proved successful, and on the very eve of a Land Act which was intended to secure the tenantry in their estates, the Emigration Commissioners were obliged to register an increased number of emigrants.

It appeared to the author that a short precursor act, or at least a clause in the Coercion Act which should suspend the power of eviction, except for non-payment of rent, until the Land-Bill had become law, would have avoided this lamentable struggle and its consequences. Another course was preferred.

journal of a visit to the Earl of Rosse, Her Majesty's Lieutenant of the King's county, narrates the following conversation :—

"Do you believe," I said to S., "R[osse]'s description of a portion of the magistracy to be accurate?"

"I do," he answered, "I believe that in some parts of the adjacent counties they are as bad as can be. I believe that if they had the absolute control of the police, not only would they make corrupt appointments, not only would they employ the police for their own purposes, but they would sometimes use them to get up accusations against their enemies."—Senior, *Journal and Essays relating to Ireland*, vol. ii. p. 253.

* Several cases of persons having been prosecuted for addressing "threatening letters" to themselves are recorded in the newspapers during the past year or two. One bailiff at present lies in prison for the offence. Senior gives a case (vol. ii., p. 229) extracted from the *Kerry Post*, October 18, 1862, where a steward, to whom his employer had given notice to leave, was charged with sending her a "threatening letter" ordering her to dismiss him. This device was adopted in the hope that she would act contrary to "ribbon intimidation" and retain him. One of the landlords, whom Mr. Senior consulted, has since been charged on the affidavit of a servant with bribing her to post a "threatening notice" to him. The object alleged was that he hoped by this plan to induce his wife to consent that they should become absentees.

But the struggle, if desperate, may be regarded as the last upon such a scale; the hostile alarms still heard are those of receding not of advancing agrarian strife.

Properly considered, the fact that the members of agrarian leagues were stirred by real grievances, is the strongest foundation for hope of their disbandment and future peace. All dispassionate authorities coincide in the spirit of Wakefield's declaration: "I am persuaded, therefore, from these circumstances, that their discontent and irregularities are not the consequence of depraved habits or public grievances, but are solely owing to an indignant sense of private injuries which they have no other means of redressing." Other means now exist.

Historically regarded, the fact is certain, however paradoxical it may seem, that the secret agrarian confederacies acted in many places in defence of rights and customs granted or sanctioned by English law,—and in opposition to those "Irish cuttings, cessings, and exactions" which English law, in times past, denounced and prohibited.

They preserve, even yet, the forms of law in their proceedings. Speaking of the operations of the ribbonmen in 1862, a magistrate said:—

"The proceedings of these societies have more than the force of law, and many of its forms. They evict as we do, and the *Posse Societatis* goes to the ground and executes the writ of *habere*. I knew a case a

little while ago, in which a man was accused of some offence. Several of them surrounded his house, and two went in and summoned him to go with them to the place where they held their sessions.* He obeyed—was tried, convicted, and sentenced to be shot. But a member of the court pleaded in his behalf some mitigating circumstances, and required the sentence to be commuted for transportation. This was consented to. Two members were deputed to attend him to the port, pay his passage money, and see him

* It is also to be observed that they followed legal traditions, not admitted to be obsolete by them, when they essayed to prevent the augmentation of the lord's demesne at the cost of the tenantry-land, when they tried to preserve old customs, when they hindered large extents of tillage from being converted into pasture, and when they (as "Levellers") cast down the fences newly set up to enclose commons. The latest case of levelling such fences occurred in England, on the commons around London: "Some of the commoners took action against the lords of the manors, and either brought suits in equity to restrain their enclosing or resorted to the ancient and constitutional practice of pulling down the fences. The Master of the Rolls in one case affirmed that that was a constitutional practice, declaring in answer to observations made upon what at first sight seemed a rather bold proceeding—namely, the sending down of two hundred men from London to pull down fences, that it was a perfectly legitimate transaction."—*Times*, April 5, 1871. Parliamentary Intelligence. Speech of Mr. Shaw Lefevre.

Yet in Ireland the "Levellers" were pursued and punished as the vilest criminals. The common law which the English peasants have enjoyed has ever been most grudgingly permitted to the Irish. Hence the perpetual aptness of what Sir John Davis wrote: "In a word, if the English would neither in peace govern them by the law, nor could in war root them out by the sword; must they not needs be pricks in their eyes and thorns in their sides till the world's end."—Davis, *A Discoverie*. Dublin edition, 1787, p. 90.

embark ; and he was solemnly warned that if he returned he would be shot without mercy.”*

To supersede all kinds of “ wild justice ” by impartial law is the first duty of a statesman. When men, who are not specially delegated by the whole community and are not subject to the controlling influence of public opinion, assume the right of redressing even admitted wrongs, many evils will generally ensue. Their deeds, being those of despair, are concocted in secrecy and executed in ambush—then follow recklessness of suffering, and, it may be, barbarities in proportion to the risk and rigour of punishment. When the Anglo-Saxons were generally named “ Untrewe Sax,” as Cambrensis mentions, they had been long subject to Norman lords who contemned their customs and refused redress. They avenged themselves how and where they could. Tyranny causes treachery, even when native despots rule their countrymen ; when aliens ruled, the subject Saxons considered it not treachery, but strategy, to lie in wait for their task-masters.

In Ireland, fortunately, even in the worst of recent times a less hostile feeling has prevailed. Premonitory notice invariably preceded the blow. If the terms of the notice were listened to then no blow was dealt.† This indicates a desire not for vengeance but

* Senior, *Journals*, vol. ii., p. 219.

† Mr. W. S. Trench : “Threatening letters have saved the lives of my sons, and my life. The effect of the magistrates refusing bail for all persons accused of writing them, is to deprive us of such warnings. The Ribbonmen, as I have said before, are not in one sense sanguinary

for redress; and supposing even that the alleged grievance were but a fancied wrong, the course followed is a proof that no incurable class or race hatreds envenomed the quarrel.

Now that legal means of redress have been granted—that the law has been purged of modern encroachments, to a great extent, and made once again the vindicator of ancient rights and customs—the spirit of life has been withdrawn from these illicit federations.

Arthur Young, after stating that the disturbances of the Whiteboys “lasted ten years in spite of every exertion of legal power,” adds that “not an instance is known in that long course of time of a single individual betraying the cause; the severest threats, the most splendid promises of reward, had no other effect but to draw closer the bonds which connected a mul-

—they do not act from individual malice; they are the executioners of a sentence passed in pursuance of a code; they give a certain degree of fair play, of law to their victims, they scarcely ever attack without giving notice.”—Senior, *Journals*, vol. ii., p. 231.

It is also most note-worthy that they never molest the judges and jurymen by whom their fellows are condemned. Certain mischievous attempts to revolutionize, by law, the jury system in Ireland would be esteemed at their proper value, if this fact were more generally known in England. Noticing the acquittal of a peasant (wrongly charged), Senior remarked: “Are not such acquittals generally to be attributed to intimidation?” “No,” said Lord Monteagle; adding that “judges and jurymen” are never subjected to intimidation, “they are supposed to be the involuntary performers of a duty.” Informers and prosecutors, supposed to be incited by hope of reward (or blood-money) were exposed to danger in times of excitement, “jurymen never.”—Senior, *Journals*, vol. ii., pp. 191-2.

titude to all appearance so desultory." Yet, although offenders were thus screened, at a time when the influence of sanguinary laws* was observable in the occasional savagery of Whiteboy reprisals, the comment of this eminent English writer was different from what many might expect. He said: "It was then evident that the iron rod of oppression had been far enough from securing obedience, or crushing the spirit of the people. And all reflecting men who consider the value of religious liberty will wish it never may have that effect."†

* Death was then the legal penalty for a great series of offences, almost all of which are now punishable by imprisonment only. Wakefield, in 1812, found Irish peasants refusing to prosecute one who stole a sheep—then deemed an offence worthy of death. He expressed his surprise at their conduct. "Would you have us hang a man for a bit of mutton?" said they. They were more humane than the law.

† Young, *Tour in Ireland*, vol. ii., part ii., s. 7. He refers here, in particular, to "religious oppression," then actively resented by the peasant societies. Though the so-called "Ribbonism" in the southern and midland counties (as stated above) has lately been purely agrarian, it was not so formerly, as it formed an element in the "tithe-war."

On the other hand, in those Ulster counties where the Custom protected the tenant, "Ribbonism" does not at all present an agrarian aspect. It is there in perfect amity with the landlords, and exists (p. 136) as a defensive society for the protection of Catholic peasants against the Orangemen, whose ancient slogan "To Hell or Connaught," showed their intention of completing the Cromwellian transplantation. Before the Commission of Inquiry into the Orange Riots, Belfast, 1857, it was proved that they compelled Catholic tenants to quit one district of the town, and even drove out a Protestant because his wife was a Catholic. The Commissioners had also an opportunity of inspecting a "Ribbon oath" similar in origin to that which Mr. Monk read for the House of Commons. This "oath," which concluded with a quotation

Now that animosities have diminished exceedingly, that proctor "docking," and "carding" perpetrated by Whiteboys are unheard of, an instance which Young gives of the easy reclamation of the very refuse of such Whiteboys has double force. Describing an "unusual plan" of mountain improvement adopted by Sir William Osborne, whose estate lay near Clonmel (county Tipperary), he writes: "Twelve years ago he met with a hearty-looking fellow of forty, followed by a wife and six children in rags, who begged. Sir William questioned him upon the scandal of a man in full health and vigour supporting himself in such a manner; the man said he could get no work. 'Come

from the "Protestant" Bible, had done service several times before, and had, it was ascertained, been produced by a forger in 1813. Mr. Dickson in his *Narrative*, 1812, mentioned forgeries of a somewhat similar nature, as having been produced by the Orange-yeomanry party in 1792--the object being to render Presbyterian and Catholic opponents odious. Happily, the destruction of religious ascendancy tends to prevent all such displays of sectarian animosities; but, during its existence, "Ribbonism" has presented a religious aspect in the Ulster counties. It is a mistake, therefore, to consider "Ribbonism" as essentially agrarian or essentially religious.

Whence comes the name "Ribbonism?" From the knot of white ribbons which used to be its symbol. This indicates its history. White was the Jacobite colour, and the "White Cockade," an Irish tune with Jacobite words, is still the ribbon "party tune" in Ulster, as the "Boyne Water" is the "party tune" of the Orangemen. With the "cnota ban," the white knot (or white cockade), the young Irish girls used to deck their hair on festive occasions, in the seventeenth and eighteenth centuries, as we find in the Gaedhlic Jacobite ballads. These were sung until the name of O'Connell eclipsed that of Stuart. "Ribbonism," therefore, remounts to the days of King James's dis-

along with me, I will show you a spot of land upon which I will build a cabbin for you, and if you like it you shall fix there.' The fellow followed Sir William, who was as good as his word ; he built him a cabbin, gave him five acres of a heathy mountain, lent him four pounds to stock with, and gave him, when he had prepared his ground, as much lime as he would come for. The fellow flourished ; he went on gradually ; repaid the four pounds, and presently became a happy little cottar. He has at present twelve acres under cultivation, and a stock in trade worth at least eighty pounds. His name is John Conory.*

banded soldiers, the rapparees, who, like the wood-kern and tories, represented the executive element of the practically non-"denizened" peasantry (see p. 37).

At the commencement of the present century two factions existed in Munster, the *Shanavest* and *Caravat*. From a Gaedhlic ballad (*Munster Poets*, second series, p. 19), it appears that the latter was also called "Caravat ban," or "White Cravat." This becomes significant in connection with what follows : "The Shanavest is the lower order of the Catholics who are sworn Republicans, and the Caravats are the Catholic" (old Jacobite) "party inclined to royalty."—Wellington, *Correspondence*, Ireland, 1807-8, p. 407. It is curious to find that at the present day the republican Fenians are regarded with coldness by the "Ribbonmen," who can hardly be said to incline to royalty now. At Newry, in 1870, there was a fight between Ribbonmen and Fenians. According to the *N. Y. Republic*, March 18, 1871, the Ancient Order of Hibernians (who represent the Ribbonmen in America), expel all Fenians from their ranks. This, perhaps, occurs now, not because they are less republican than the Fenians but because the latter seek to coalesce with the Orangemen.

* As a pendant to this may be cited the case of two Sussex farmers brought over by Mr. Townshend, Brockham, Cork, who after careful inspection took possession of two tracts, with the buildings erected on

“The success which attended this man in two or three years brought others, who applied for land, and Sir William gave them as they applied. The mountain was under lease to a tenant who valued it so little, that upon being reproached with not cultivating, or doing something with it, he assured Sir William that it was utterly impracticable to do anything with it, and offered it to him, without any deduction of rent. Upon this mountain he fixed them ; gave them terms as they came, determinable with the lease of the farm, so that every one that came in succession had shorter and shorter tenures ; yet are they so desirous of settling that they come at present, though only two years remain for a term.

“In this manner, Sir William has fixed twenty-two families, who are all upon the improving hand, the meanest growing richer, and find themselves so well off that no consideration will induce them to work for others, not even in harvest ; their industry has no bounds, nor is the day long enough for the revolution of their incessant labour. Some of them bring turf to Clonmel, and Sir William has seen Conory returning loaded with soap ashes.” He gave them enough of lime. Their cabins cost him £16 a piece ; they built their own office-houses. “Sir William being prejudiced

them. The rent terms were the same as Conory's. “The undertaking went on for four years. The men were ruined, and Mr. Townshend suffered considerably by the expenses of the undertaking.”—Young, *Tour in Ireland*, vol. ii., p. 82.

against the custom of burning land, insisted that they should not do it, which impeded them for some time, but upon being convinced that they could not go on well without it, he relaxed, and since that they have improved rapidly.

"He has informed them that, upon the expiration of the lease, they will be charged something for the land, and has desired that they will make out each man what he wishes to have; they have accordingly run divisions, and some of them have taken pieces of thirty or forty acres; a strong proof that they find their husbandry beneficial and profitable.

"He has great reason to believe that nine-tenths of them were Whiteboys, but are now of principles and practice exceedingly different from the miscreants that bear that name. . . . All their children are employed regularly in their husbandry, picking stones, weeding, etc., which shows their industry strongly;*

* It is unfortunately too probable, that before these children had reached the age of sixty, they were driven again into whiteboyism or ribbonism, or ejected from their homes and fertile fields, once waste and barren, after "Emancipation."

That such ejectments—"felonious acts," as Lord Clarendon called them—are the principal causes of ribbonism, may be seen from the testimony of Mr. W. S. Trench, agent for Lansdowne, Bath, and Digby, (King's and Queen's counties, and Kerry). After stating that he had been the object of conspiracies during the last twenty years, he adds: "And yet I deny that the Irish are a sanguinary people. There are five times as many murders committed in England as there are in Ireland. 'Because,' I said, 'there were five times as many people.' 'Well then,' he replied, 'I will say ten times as many. I never take up an English newspaper in which I do not find murder after murder,

for in general they are idle about all the country. The women spin.

“Too much cannot be said in praise of this undertaking. It shows that a reflecting, penetrating landlord can scarcely move without the power of creating

heading a column. There is the ‘Road Murder,’ the ‘Kent-street Murder,’ the ‘Greenwich Murder,’ and so on. The English ruffian murders for money. He sees a man get change at a public house, follows him, and beats out his brains to rifle his pockets of 2s. 3d. The Irishman murders patriotically. He murders to assert and enforce a principle—that *the land which the peasant has reclaimed from the bog, the cabin which he has built, and the trees that he has planted are his own—subject to the landlord’s right, by law, to exact a rent for the results of another man’s labour. In general he pays the rent; generally he exerts himself to pay it, even when payment is difficult to him*” [and even when the rent is increased because of the improvements he alone has made]. “But he resolves not to be dispossessed.” [Not to have all the fruits of his toil snatched from him, as Lord Clarendon said, “feloniously”.] “He joins a ribbon lodge, and opposes to the combinations of the rich, the combination of the poor. . . . If I had been born an Irish peasant, and had been brought up in the ignorance and in the prejudices of an Irish peasant, or taught as he has been, *I should, probably, have been a ribbonman myself.*”—Senior, *Journals*, vol. ii. pp. 220-3.

Mr. Trench stated that he had no vindictive feelings towards those who conspired against him; adding: “I am almost ashamed to say how much I have sympathised with them.” He often felt that what he was doing in preventing subletting and “*in ejecting men from farms which they had been encouraged by my predecessors to reclaim* . . . must appear to them oppressive.” The above testimony was given in 1862, at the time when there was no prospect of a Land Act. Latterly Mr. Trench has described the tenants as desirous of claiming, through ribbonism, the properties of their “ancestors,” and of ousting their landlords. *This description was composed in the exciting period of the enactment of the present Land Law. It may be found in “Ierne,” and “The Realities of Irish Life”—a pair of able but sensational romances.*

opportunities to do himself and his country service. It shows that the villainy of the greatest miscreants, in all situation and circumstance: EMPLOY, don't hang them.

"Let it not be in the slavery of the cottar system, in which industry never meets its reward, but by giving property teach the value of it; by giving them the fruit of their labour teach them to be laborious. All this Sir William Osborne has done, and done it with effect, and there probably is not an honester set of families in the county than those which he has formed from the refuse of the Whiteboys."

Sir William lost nothing, but profited greatly by his experiment. "Suppose he builds a house to every twenty acres, and limes that quantity of land, the expense would be a few shillings over £40, or 40s. an acre. If they pay him 2s. 4d. an acre for the land he will make just £6 per cent. for his money—a most striking proof of the immense profit which attends mountain improvements of every kind; because instead of 2s. 4d., they would consider 6s. or 7s. a rent of favour: 4s. 8d. is twelve per cent. for his money; 7s. is eighteen per cent.

"Yet in spite of such facts do the lazy, trifling, inattentive, negligent, slobbering, profligate owners of Irish mountains leave them in the possession of grouse and foxes. Shame to such a spiritless conduct!"*

* Young, *Tour in Ireland*, vol. ii. pp. 170-4. The above is not the only case of reclamation of Whiteboys he records. Elsewhere he men-

It is unnecessary to insist on the lessons contained in this narrative. The facilities offered by the recent "Landlord and Tenant Act," will, it may be hoped, induce most landlords to follow an example so favourable to the moral and material progress of their country. That some will make use of them is probable, because it is to be remembered to the credit of not a few Irish landlords, that they have resisted temptations (which rarely beset English landlords) to break down, for their personal profit, ancient customs made frail by the discountenance of modern law. To the honour of many Irish landlords be it said that they have shown themselves humane and considerate, when the

tions that Lord Kingborough, on coming of age, found his immense property in the hands of middlemen, whose business was to hire vast tracts as cheap and re-let them as dear as they could. Misery, poverty, crime, followed. His lordship, many leases being out, rejected the "trading tenant," and let the farms to the occupiers "at the rent he had himself received before." He also built. "Mitchelstown, till his lordship made it the place of his residence, was a den of vagabonds, thieves, rioters, and whiteboys; but I can witness to its now being as orderly and peaceable as any other Irish town."—*Ibid.* p. 277.

Weld gives a similar instance of the reformation of an estate of 15,000 acres in Kerry, the refuge of wreckers and criminals—it was reformed, not by evictions, but by attention.—Weld, *Survey of Roscommon*, 1832, p. 250.

Pare describes how, in 1830, when Clare was greatly troubled by "Whitefeet," "Terryalts," and "Lady Clares," (at the Emancipation-eviction period) Mr. Vandeleur converted his estate into a peaceful paradise, by giving the peasants an interest in their work through the co-operative system. He commends his account to the public "now that the Legislature is at its sad old work passing a 'Peace Preservation Act.'" Pare, *Co-operative Agriculture*. Longmans, 1870.

law sanctioned injustice, and when "public opinion" did not reprove but encourage inhumanity. Yet others, persevering in opposite courses, may neglect reject the opportunities offered, the Legislature should take care, by purchase and re-letting of waste lands, that a most important provision of the land law it enacted, shall not thus be avoided.

In order that the wounds long existing between the two classes of upper and under tenants may rapidly heal, certain other obstacles to their perfect union should be removed. Revision and reform are required for a grand jury system, under which at present one class is taxed by another—for a system of poor-law rating which tempts one class to evict another—and for a system of electoral voting which holds out to one class inducements to coerce another.

These reforms, most valuable though they must prove, would still be incomplete without a general recognition of the most important of ancient customs—the practice, namely, of allowing continuity of tenure.* This custom, which was of old the right of

* Sir John Davis based his whole plea for the displacement of Irish by English tenures on the statement that, by this means, the inhabitants of Ireland would enjoy security and continuity instead of having only "a scrambling and transitory possession." Pledging his government to make such a change, he stigmatized non-continuous tenures thus: "For who would plant, or improve, or build upon that land which a stranger whom he knew not should possess after his death? For that (as Solomon noteth) is one of the strangest vanities under the sun."—Davis, *A Discoverie*, Dublin edition, 1787, p. 129.

free men, and the privilege of serfs, underlay and vivified those shorter leases of later times, which secured certainty of rents for determinate periods. Its presence always gave peace. The attempts made to destroy it have ever been productive of turmoil and agrarian strife. Once general, always in existence, it should before now have been recognized by judicial decisions, for it is a most reasonable, certain, and ancient custom, continued by the people for a time "whereof the memory of man runneth not to the contrary."

If the courts, in opposition to the suggestive clauses of the new Act, fail to acknowledge it, then should not the Legislature delay to grant it the sanction of superior authority. For this custom, "the good old modus" of writers at the commencement of this century—the "old equity of the kingdom" of our judges a hundred years ago, was confessed in the terms of the Cromwellian Settlement, and was confirmed, but not created, by the conditions of the earliest Plantations.

Of eminent utility to the State, its excellence for both lord and husbandman was rightly affirmed by the Emperor Anastasius in that edict which established it as a law of the whole Roman Empire.

*Τοῦτο δὲ καὶ τῷ δεσπότῃ καὶ τοῖς γεωργοῖς λυσί-
τελες.*





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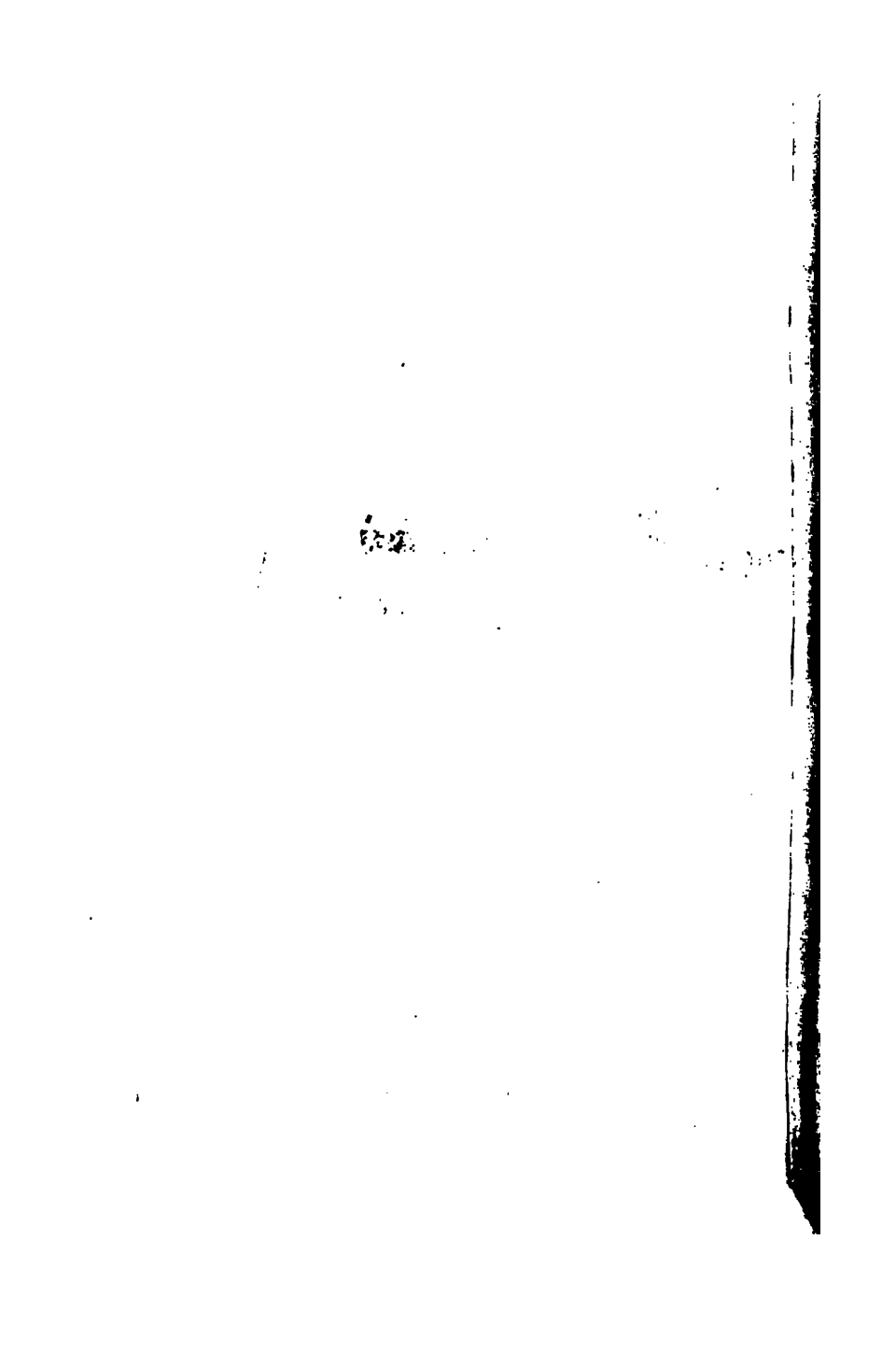
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